



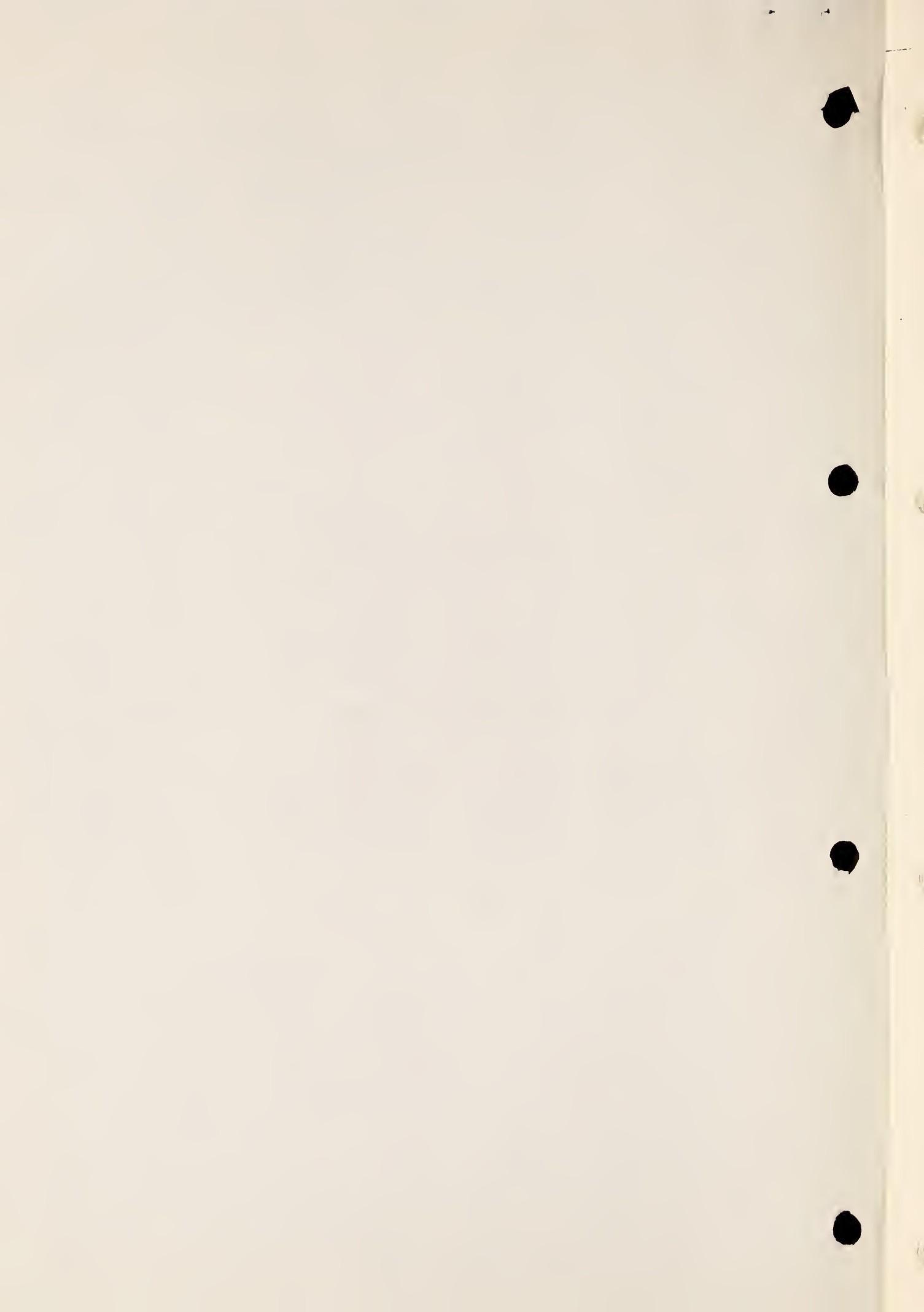
THE ONTARIO HUMAN RIGHTS CODE,
R.S.O. 1970, c. 318, as amended

IN THE MATTER OF: The complaint, as amended, made by Mr. Leslie Nawagesic of Gull Bay, Ontario, alleging discrimination in failure to rent an apartment by Mr. and Mrs. Girolano Crupi, 552 Lansdowne Court, Thunder Bay "F", Ontario.

APPEARANCES: Mr. Thomas Lederer, Ministry of the Attorney General - Counsel for the Ontario Human Rights Commission and Mr. Leslie Nawagesic.

Mr. D. W. Climenhage, Esq. - Counsel for Mr. and Mrs. Girolano Crupi.

A HEARING BEFORE: Peter A. Cumming, appointed a Board of Inquiry in the above matter by the Minister of Labour, The Honourable Bette Stephenson, by form of appointment dated July 14, 1977 to hear and decide the complaint.



DECISION AND ORDER

Preliminary Point

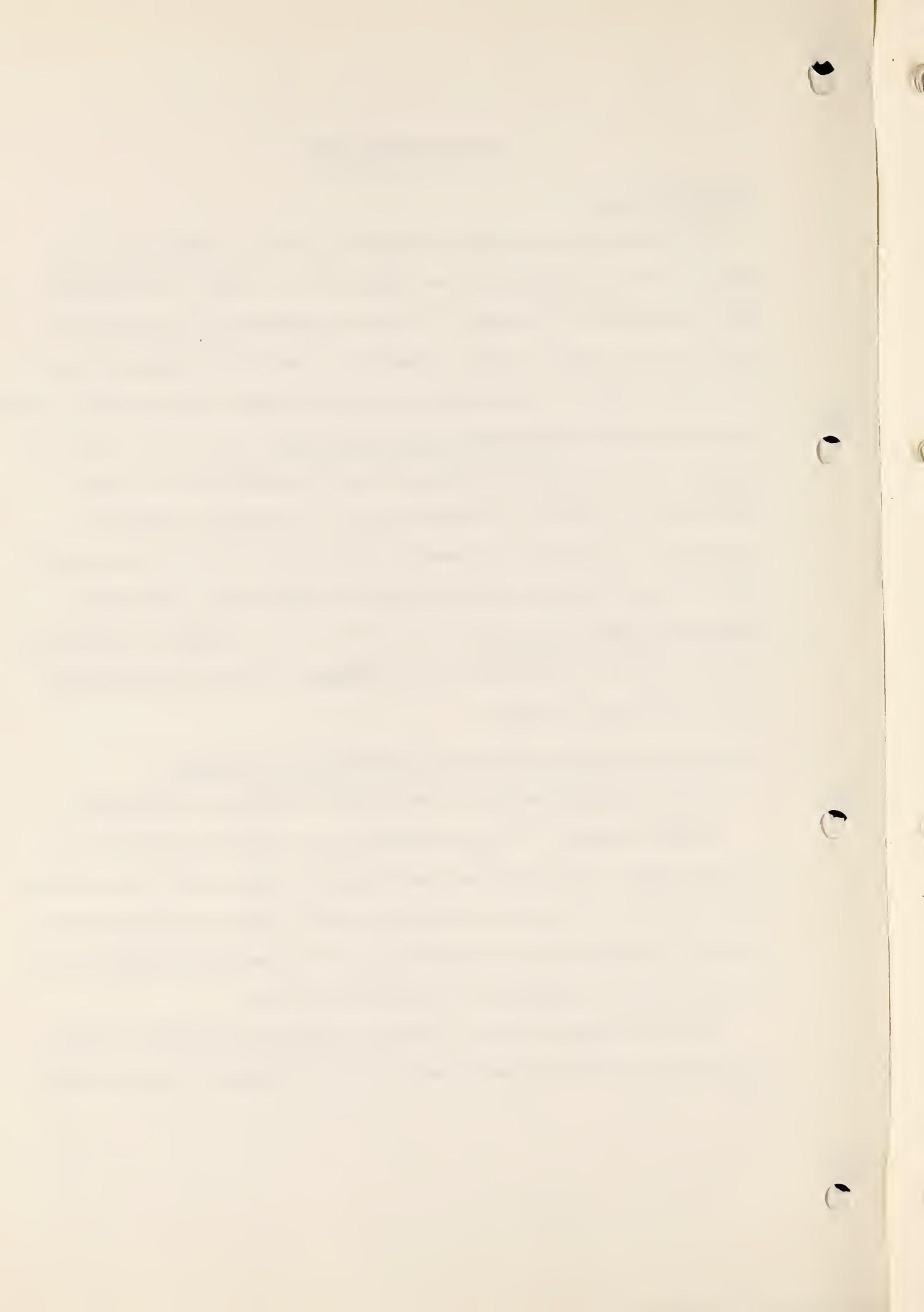
My Appointment as a Board of Inquiry was filed as Exhibit #1. The Complaint (filed as Exhibit #2) was against "Mr. J. Crupi", 552 Lansdowne Court, Thunder Bay "F", Ontario. At the very beginning of the hearing Mr. Lederer moved, agreed to by Mr. Climenhage, to amend the Complaint and add Mrs. Crupi, wife of the Respondent, as a person named in the Complaint alleged to have contravened The Ontario Human Rights Code, R.S.O. 1970, c. 318, as amended. As well, during the hearing it was determined that the proper full name of Mr. Crupi was "Girolano Crupi", and, with Mr. Climenhage consenting, the Complaint was amended so that "Mr. and Mrs. Cirolano Crupi" were the persons named in the Complaint as alleged to have contravened The Ontario Human Rights Code, R.S.O. 1970, c. 318, as amended. Accordingly, both Mr. and Mrs. Girolano Crupi were respondent parties to the proceeding before this Board of Inquiry.

The Evidence as to the Factual Situation Related to the Complaint

There was disagreement as to the factual situation in this hearing.

Leslie Nawagesic, 31, the complainant, now of Gull Bay, Ontario, is a Canaidan Indian. His physiognomy would suggest clearly that he is of native person ancestry. At the relevant time, April 21, 1976, he was employed as a counsellor by the Indian Friendship Centre of Thunder Bay in connection with a program under the auspices of the Provincial Court.

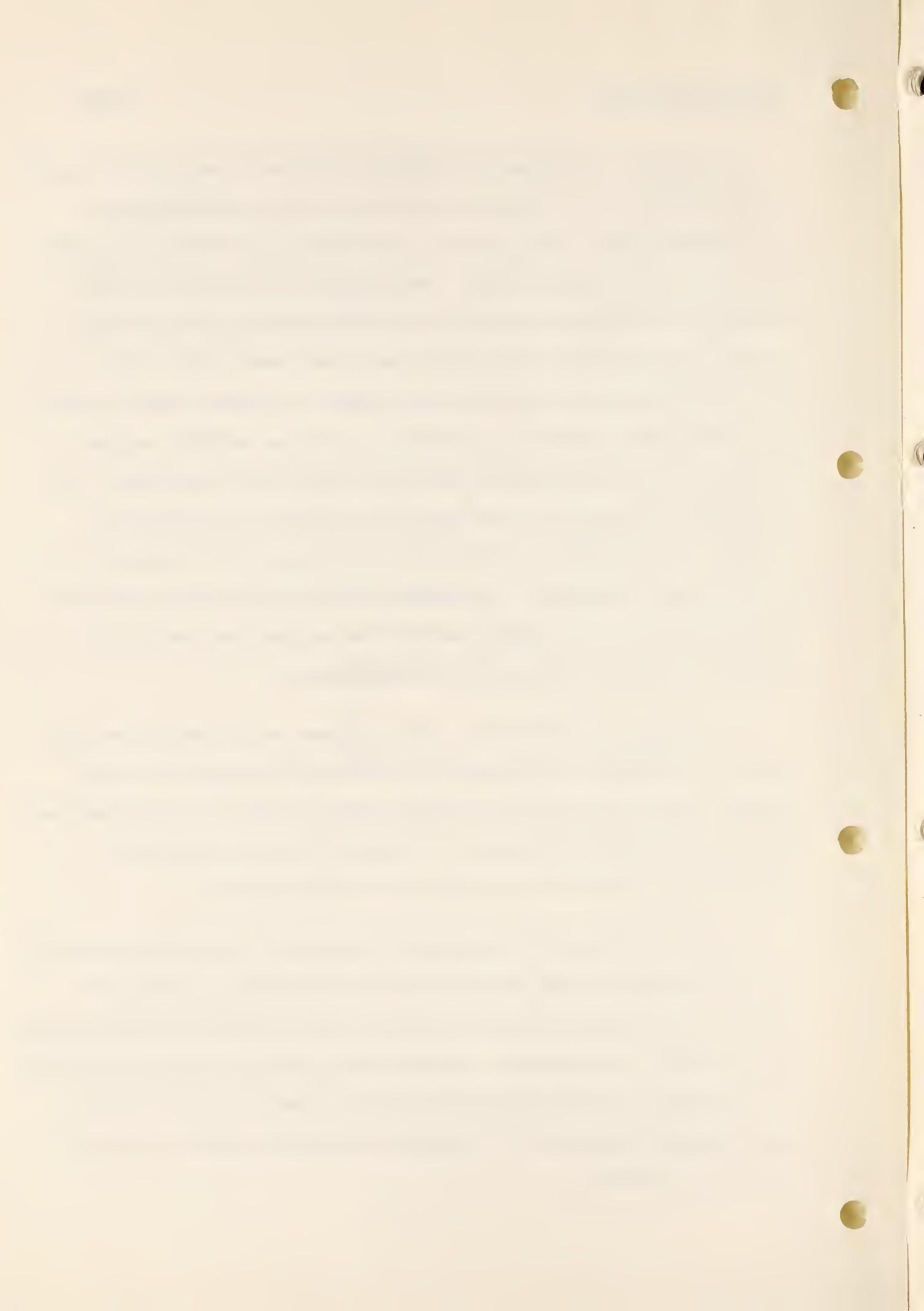
During the week of April 21, 1976, Mr. Nawagesic was looking, through responding to newspaper advertisements, for an apartment to rent in Thunder Bay.



Mr. Nawagesic telephoned in response to an advertisement in the Chronicle Journal of April 21, 1976 (Exhibit #3) which referred to an apartment at 552 Lansdowne Court. The premises at that location are owned by the Respondents, Mr. and Mrs. Girolano Crupi. Mr. Nawagesic testified that a lady answered the telephone, and being told the apartment was still available, he went to the premises about one-half hour later, about 6:00 or 6:30 p.m. He testified he parked in the driveway, knocked at the front door, and asked the lady answering whether the apartment for rent was available, and was told that it was still available and to go to the rear of the building. He said that as he proceeded to the rear of the building, he heard what he thought to be an argument in the house. The entrance to the apartment is from the rear of the house. Mr. Nawagesic testified that a man came to the rear door and when Mr. Nawagesic asked if the apartment was available the man said it had been rented out five minutes before.

Mr. Nawagesic testified that he felt confused and frustrated, and being unsure as to whether he had been told the truth, that evening went to his sister's place and gave her the telephone number in the ad, and also gave the number to Ms. Beverly Sabourin at the Friendship Centre, asking both to telephone to determine if the apartment was still available.

Beverly Ann Sabourin, an employee of the Ministry of Community and Social Services in April of 1976, and at the time of the hearing an employee of Confederation College, Thunder Bay, has known the complainant, Leslie Nawagesic for some years. Ms. Sabourin, a native person, testified she was at a meeting at the Thunder Bay Indian Friendship Centre the evening of April 21, 1976. Ms. Sabourin testified that Mr. Nawagesic came in about 8:00 p.m. and told her what had happened.



"He was looking for an apartment and he asked me if I would call this place to see if it was still available and I took the phone number and he came with me. I asked the gentleman who answered the telephone whether the apartment was still vacant and he said it was and I asked could I go and look at it and he said I could and I asked when it would be convenient and he said anytime and I said this evening and he said yes I could go this evening and that was it." (Evidence, p. 55)

Patricia Nawagesic, sister to the complainant, resides in Thunder Bay, and is an employee at the Thunder Bay Indian Friendship Centre. She testified her brother came to her that evening and asked her to phone a number he gave to her and ask the person answering if the apartment advertised was still available.

"Q. Now what happened when you made the phone call?

A. Well I phoned and a man answered and I asked him if their apartment was available and he said yes it was and then I asked if it is all right if I could go and see it that evening and he said yes I could.

Q. You say that was a man that answered the phone?

A.. Yes.

Q. How do you know that?

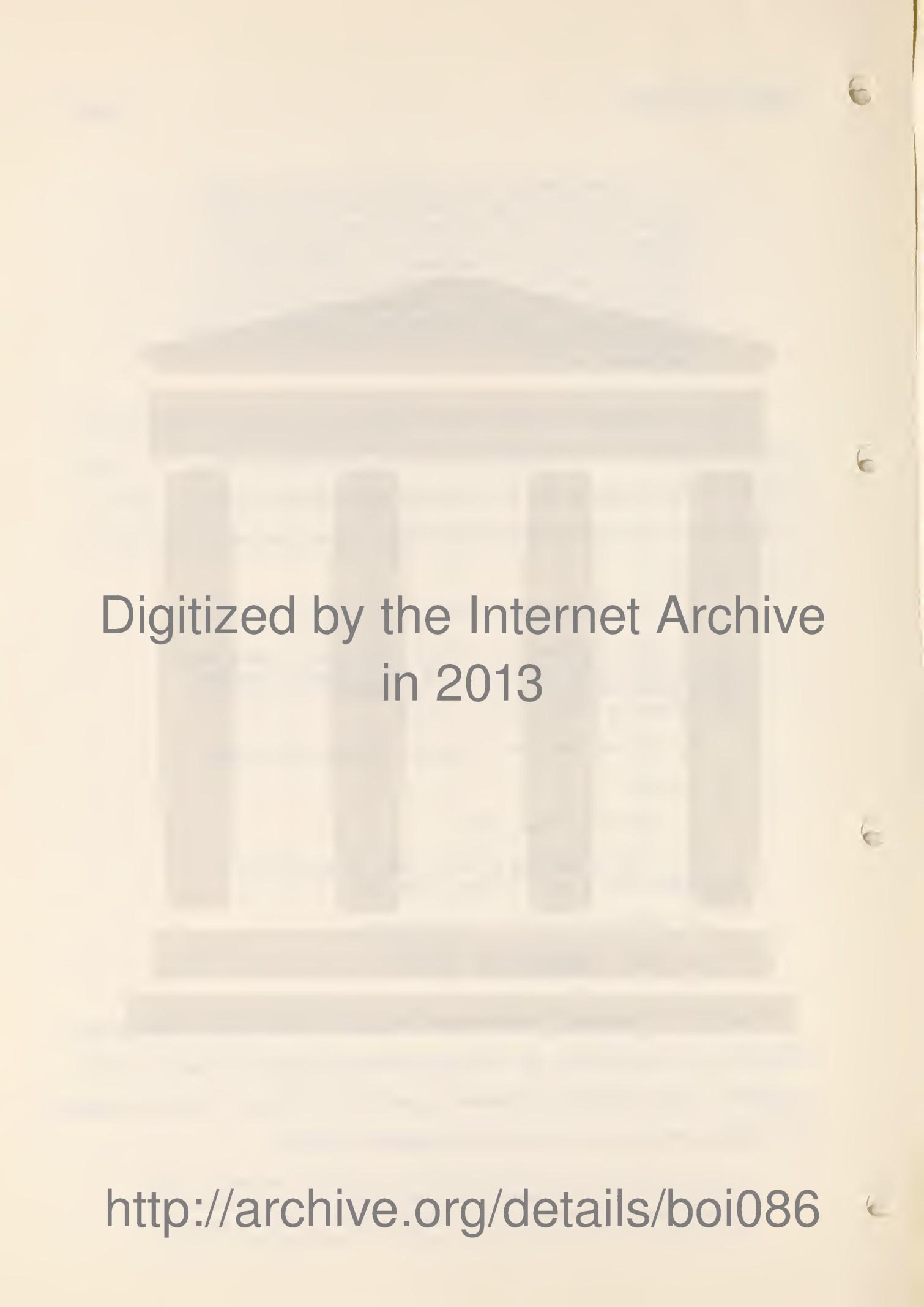
A. I had a feeling it was a man. I could tell, it sounded like a man's voice, older man.

Q. Could it have been a young boy?

A. No." (Evidence, pp. 58, 59)

Mr. J. A. K. McCuaig, Human Rights Officer for the Ontario Human Rights Commission in Thunder Bay, was the investigating officer in respect to this complaint. He testified Mr. Nawagesic came May 20, 1976, to file the complaint. Mr. McCuaig testified as to what Mr. Nawagesic told him:

A. Yes sir, he indicated that on the 21st of April, 1976 he had seen an advertisement for an apartment on Lansdowne Court. He had phoned the number in the newspaper and had then gone to that address, indicated he had spoken - I believe to a woman at

A very faint, blurry background image of a classical building with multiple columns, likely the Library of Congress, serves as the backdrop for the text.

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the time when he phoned from a pay phone in the Holiday Inn. He advised me that it took approximately half an hour to get to Lansdowne Court and he went to the front door, where he was met by a woman, who advised him that the apartment was available and then directed him to go to the back door.

He explained to me that he went around to the back and he heard voices which he believed were Italian and then he was met by a man at the back door who advised him that the apartment had been rented five minutes prior. (Evidence, pp. 29, 30)

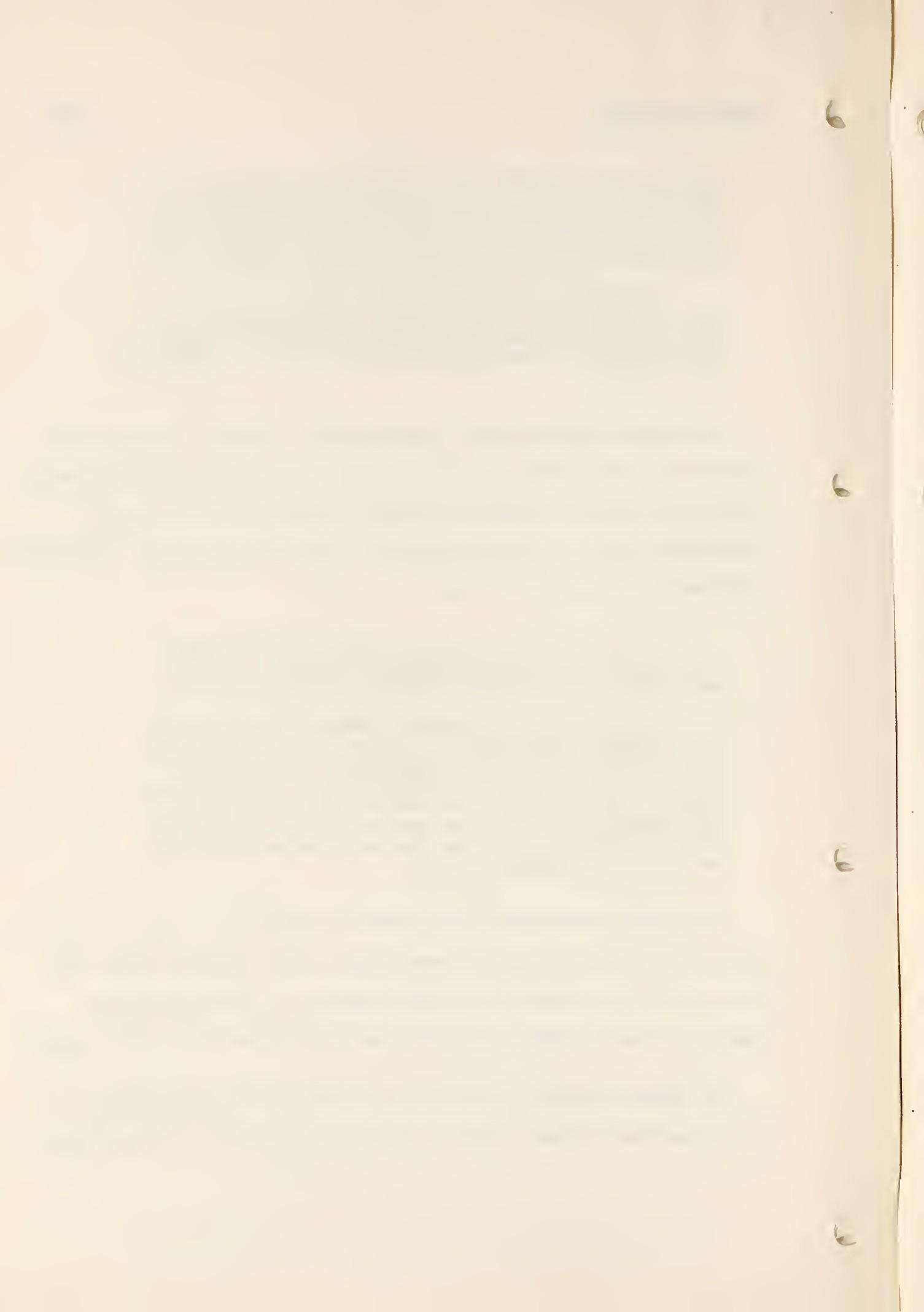
Mr. McCuaig determined that an advertisement (Exhibit # 3 and #4) had been placed in the Chronicle Journal for April 20, 1976. After interviewing the witness, Beverly Sabourin, Mr. McCuaig attended upon the Crupis at 552 Lansdowne Court, providing them with a copy of the Complaint. Mr. McCuaig testified as to what they told him:

A. They said they could not recall whether a person came that was an Indian gentleman but they could recall a man coming on the evening of the 21st of April.

They explained to me further that they didn't discriminate against native people but that the reason they could not rent the apartment to Mr. Nawagesic or this man that came to the door was simply they had rented to another party earlier. They identified that party as a Mr. David Zub and they subsequently told me the receipt was dated April 27th and they explained to me that they had promised it to him on the 21st. (Evidence, p. 33)

Mr. Crupi's receipt book was entered as Exhibit #12. It had been produced to Mr. McCuaig during the investigation. The separated receipt stub with respect to the rental to David Zub (Exhibit #5) refers to the date "April 27 to May 27, 1976", suggesting the rent received was for that period.

Mr. McCuaig located Mr. Zub by letter (Exhibit #6), and testified that Mr. Zub informed him that in fact he rented the apartment at 552 Lansdowne



Court as of May 27, 1976, and produced a rent receipt (Exhibit #7) with the single date "May 27, 1976."

Mr. McCuaig testified that at a later meeting with the Crupis, Mr. Crupi advised him that there had been a mistake in suggesting Mr. Zub was a tenant in late April, 1976, and that another individual, Larry Smykalski, had in fact been the tenant at that time.

Mr. McCuaig testified as to what he learned from Mr. Smykalski:

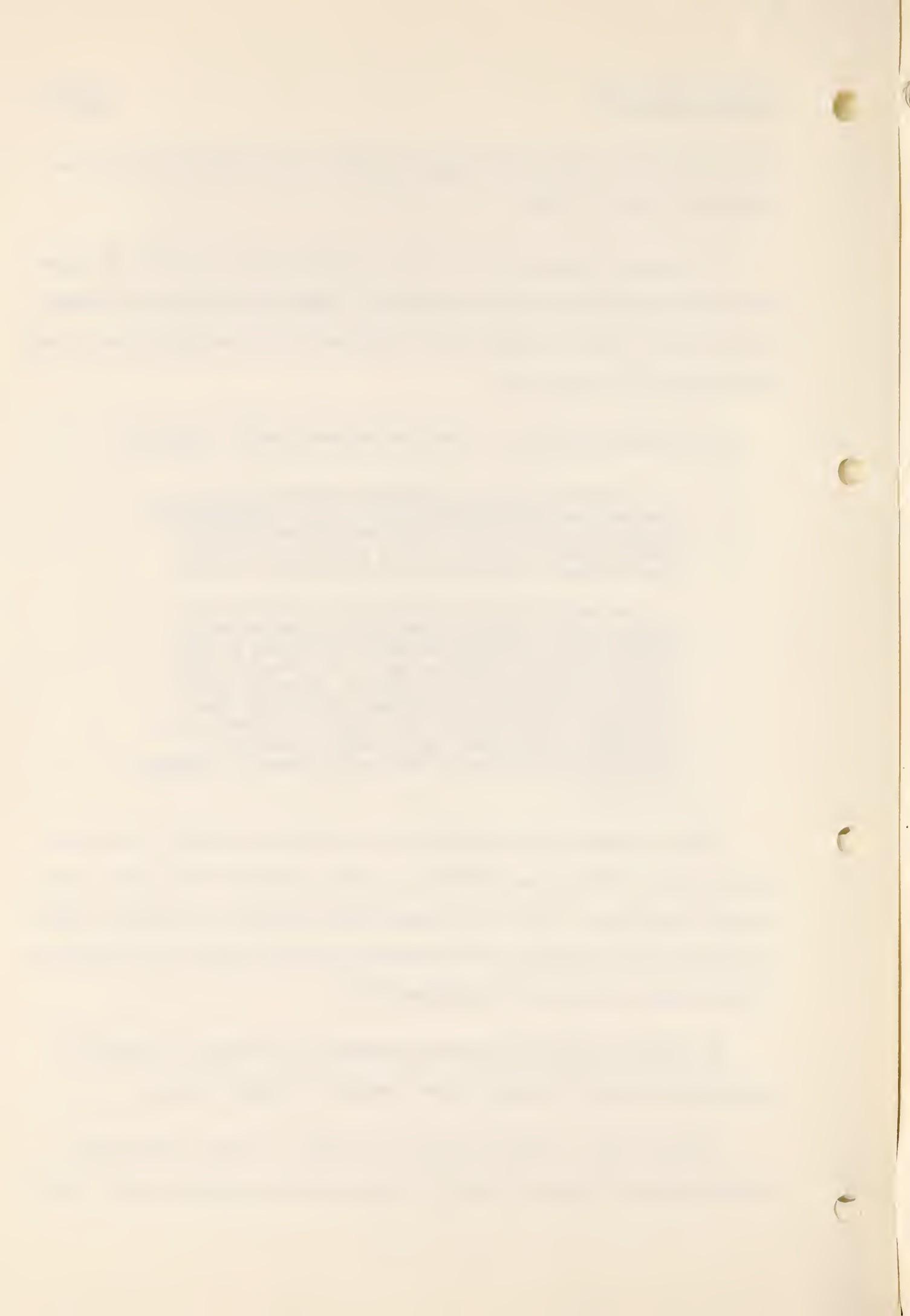
I asked him when he had gone around to see the apartment and he explained he had seen an advertisement in the newspaper in the latter part of April and he actually made two visits to the apartment, the first one by himself, the second one with his girl friend.

He associated that date as being a Wednesday or Thursday and I believe we narrowed it down to on or about the 28th of April and on the following Saturday he stated that he went back and at that time he indicated he would take the apartment. He explained to me prior to that that he had been told by Mr. Crupi something to the effect it was first come first served basis and he explained that his cheque would show the date that he actually took the apartment. (Evidence, pp. 40, 41)

The cheque given by Mr. Smykalski to Mr. Crupi, dated May 1, 1976, was obtained by Mr. McCuaig and produced in evidence (Exhibits #9 and #10). The cheque is dated May 1, 1976. Mr. McCuaig then determined a subsequent advertisement for the apartment in 552 Lansdowne Court was placed in the Chronicle Journal Friday, April 30, 1976 (Exhibit #11).

Mr. McCuaig's investigation was meticulous and thorough in respect to the factual situation relevant to the Complaint and this hearing.

The Respondent, Girolano Crupi, gave evidence. He has a fairly good understanding of English, although an interpreter was sworn and used at times



during his testimony when he had any difficulty with questions. Mr. Crupi, 47, is a machine cleaner with the Saskatchewan Wheat Pool. He was born in Italy and came to Canada in 1954. He has resided as owner at 552 Lansdowne Court in Thunder Bay since May 1, 1975, with his wife, Elizabeth (the other Respondent in this proceeding) and his three children.

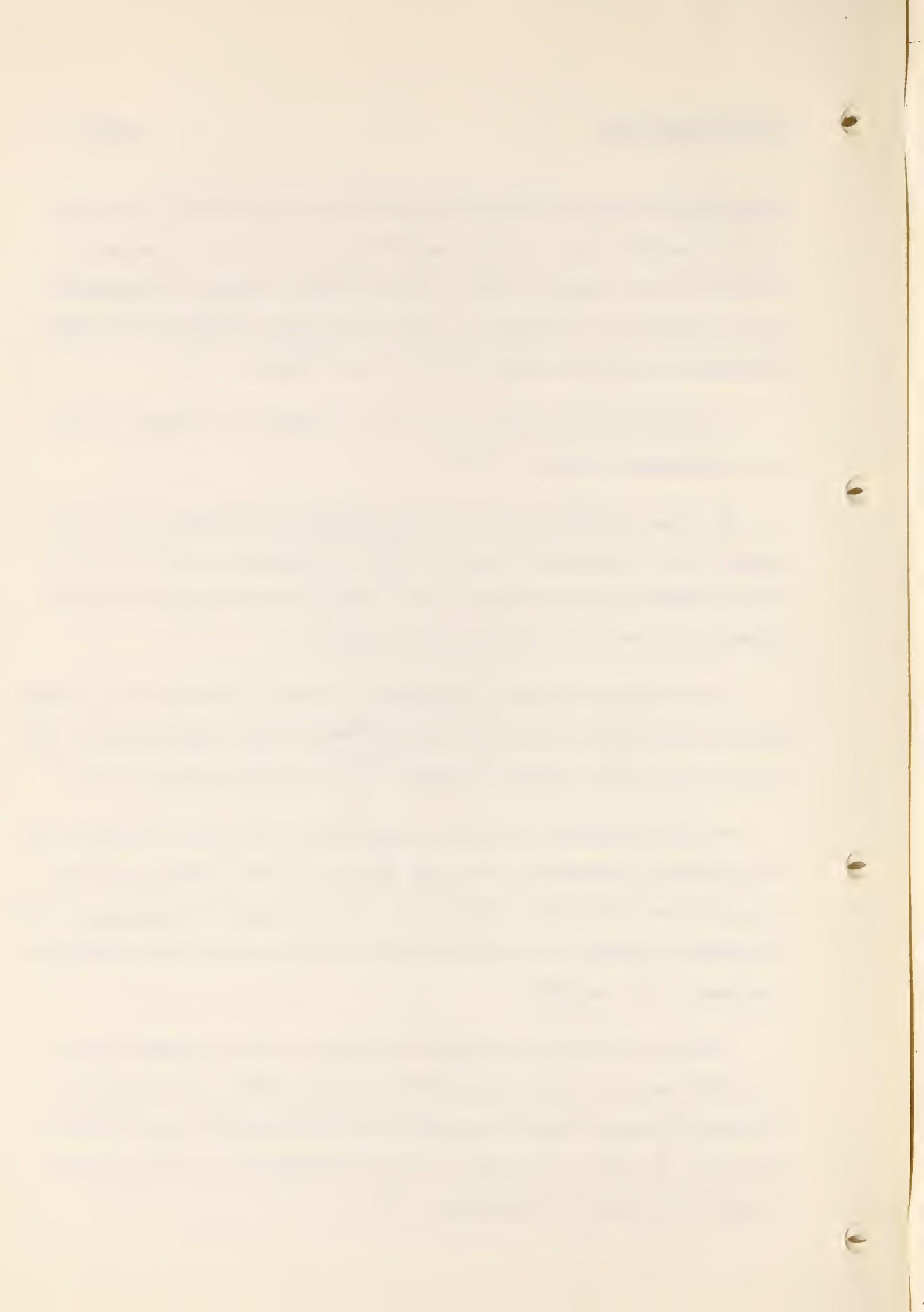
Mr. Crupi testified that he fixed up an apartment in the house to rent out, beginning in the fall of 1975.

Mr. Crupi testified that his wife advertised the apartment, as it had become vacant, as available to rent in the newspaper on April 21, 1976, and that in response had two enquiries that evening, the first being Mr. Larry Smykalski and the second being from Mr. Nawagesic.

Mr. Crupi said he knew Mr. Smykalski to see him, but not by name, because he had seen him downtown on three to five occasions with a girl from Schrieber, Ontario, who is the daughter of friends of his from his hometown in Italy.

Mr. Crupi testified he told Mr. Symkalski, at the latter's request, that he would hold the apartment for a week "Because I trust, trust him because he go with an Italian girl, he take that room, the apartment" (Evidence, p. 70). No deposit was taken. He said his wife was upstairs while he was showing the apartment to Mr. Smykalski.

Mr. Crupi said that Mr. Nawagesic came five to fifteen minutes later. He said he was then in the backyard when his wife called him in, told him there was an enquiry about the apartment, and that she would send the man to the back. Mr. Crupi says he then told Mr. Nawagesic that the room had been "taken five minutes ago" (Evidence, p. 83).



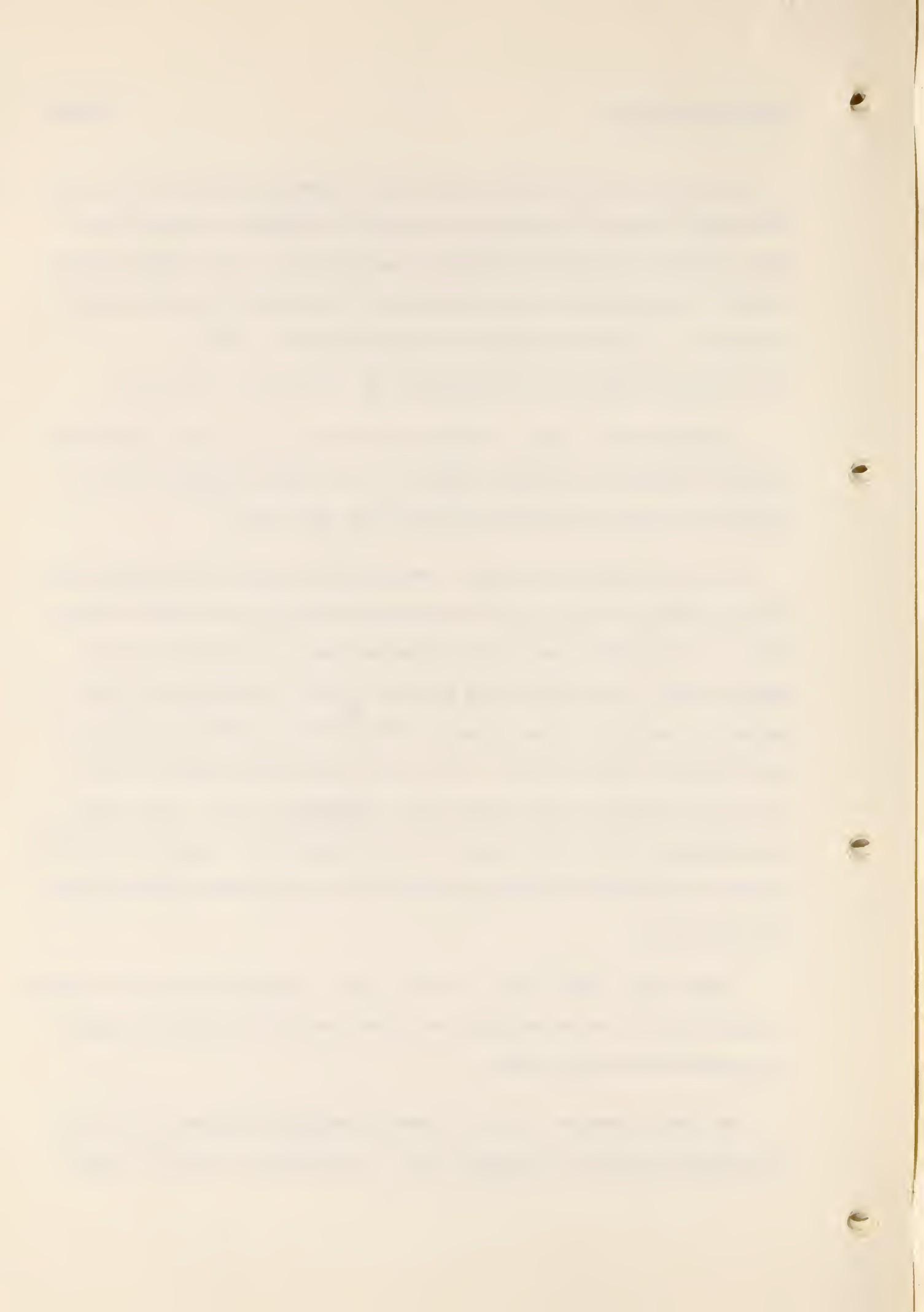
Mr. Crupi testified further that as Mr. Smykalski did not "show up" his wife again advertised the apartment through the newspaper on April 29th or 30th. However, he said Mr. Smykalski then did return on the "28th or 29th or 30th" with his girl friend, and did rent the apartment giving Mr. Crupi a cheque. Mr. Crupi said that Mr. Smykalski was a tenant for about three weeks, and the apartment was then rented to Mr. Zub.

According to Mr. Crupi, it was his eleven year old son who answered the telephone enquiries the night of April 21. Mr. Crupi testified that the boy did not know the apartment had been taken until later.

Mrs. Crupi testified as well. She said she answered the telephone once in the afternoon on April 21, and that her son answered the telephone thereafter. She testified that when Mr. Nawagesic came to the front door and enquired about the apartment, she sent him around to the back door, and called her husband. She said that Mr. Crupi told her, after he spoke with Mr. Nawagesic at the back door, that he was holding the apartment for the man "who was going out with Italian girl" (Evidence, p. 104). Mrs. Crupi testified that she had first placed the advertisement for April 21st and 22nd, and when Mr. Smykalski failed to "show up" the advertisement was made again for April 30th.

Frank Crupi, almost age 12 in April, 1976, testified that on the evening of April 21, 1976 he was studying for a test, and that he did not remember if anyone telephoned that night.

Mr. Larry Smykalski, 24, is a chemical engineer, employed with a firm of consulting engineers in Thunder Bay. He testified he lived in an apart-



ment at 522 Lansdowne Court in 1976. At first his testimony was somewhat uncertain as to whether he first viewed the apartment April 28th, 29th or 30th. However, he said with certainty that he returned the immediately following Saturday, which was May 1st, with his girlfriend, Rita Pellegrino, when he rented it giving payment by way of cheque (Exhibits #9 and #10) for one month's rent. The cheque bears a date of May 1, 1976. Mr. Smykalski said when he first came Mr. Crupi "indicated to me that the apartment was on a first come first served basis" (Evidence, p. 51).

In his later testimony Mr. Smykalski was more certain that he first viewed 552 Lansdowne Court the evening of April 30, 1976. He said he liked the apartment when it was shown to him at that time by Mr. Crupi. He testified:

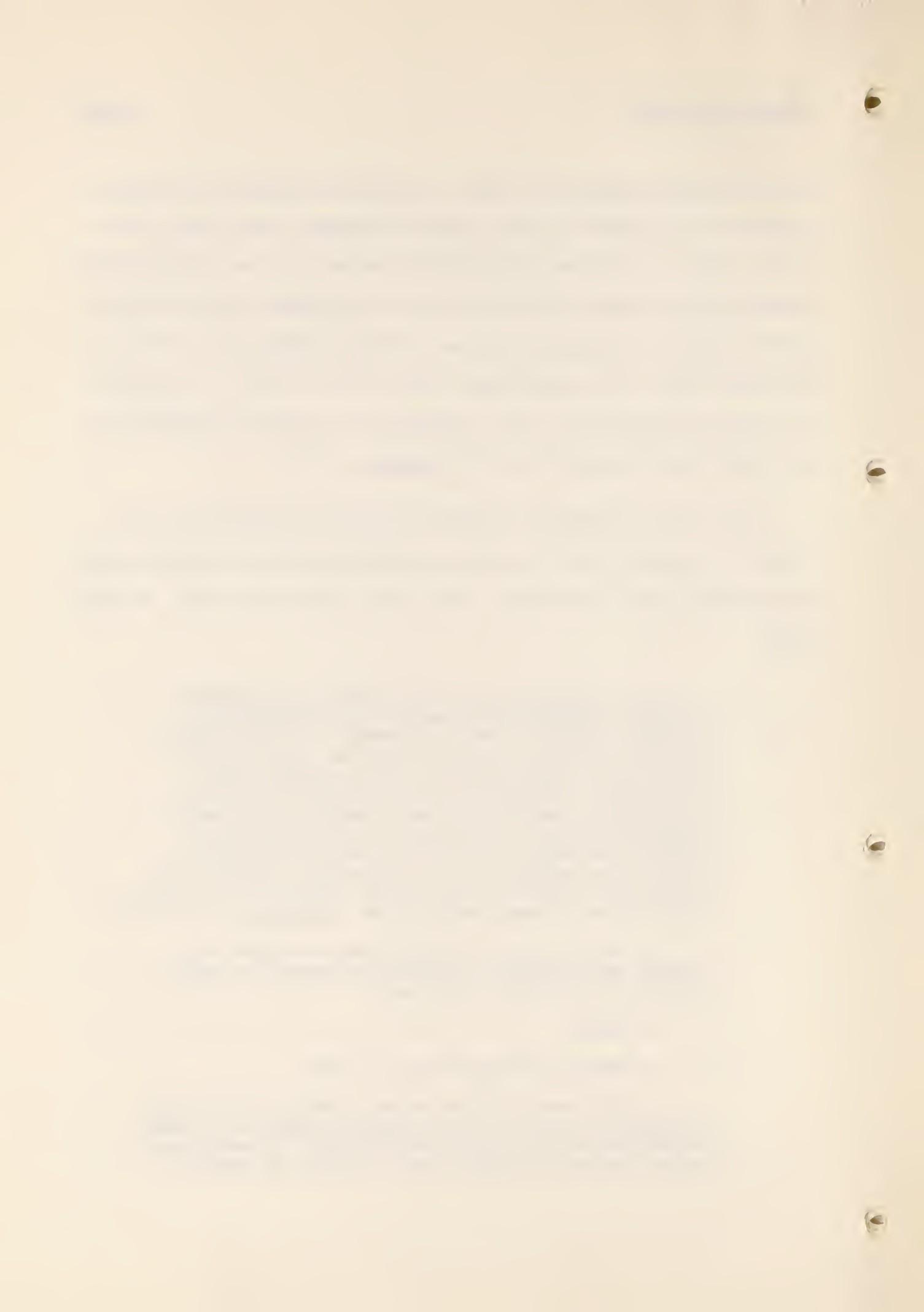
No. I had phoned the Crupi residence and inquired about the apartment and I came down and inspected the apartment from what I saw it appeared to be a nice apartment and I asked them to hold it and he said first come first served, which means first with the money, which was the way I understood it so what I did I went and got my girl friend the next day and looked at the apartment together and it was at that time that I had decided to take the apartment, that I had not decided the Friday night and he indicated to me at the time he wouldn't hold it, it was a first come first served basis and at the time I didn't have a cheque book with me. (Evidence, pp. 125, 126)

Q. Now I'm sorry, I didn't quite understand your evidence as it relates to writing the cheque, the cheque apparently was written on May 1st?

A. Right.

Q. What is the significance of that?

A. The reason for the cheque I always pay any bills and cheques in cash, I have a chequing account at the Bank of Montreal and I have only used it twice. On one occasion before that and the time I paid the rent. The reason I



paid the bank was closed, it was a Friday and my bank was closed on Saturday although had it been a week prior I would have paid the rent in cash and not written a cheque at all.

BY THE CHAIRMAN:

Why is that, because you would have had cash on your person?

BY THE WITNESS:

Yes, if it would have been the week before I would have had ample time to go to the bank because once it was a bank day I could have went to the bank on Thursday or Friday but I answered the ad on the 30th, which was a Friday and I couldn't get to the bank before Saturday.

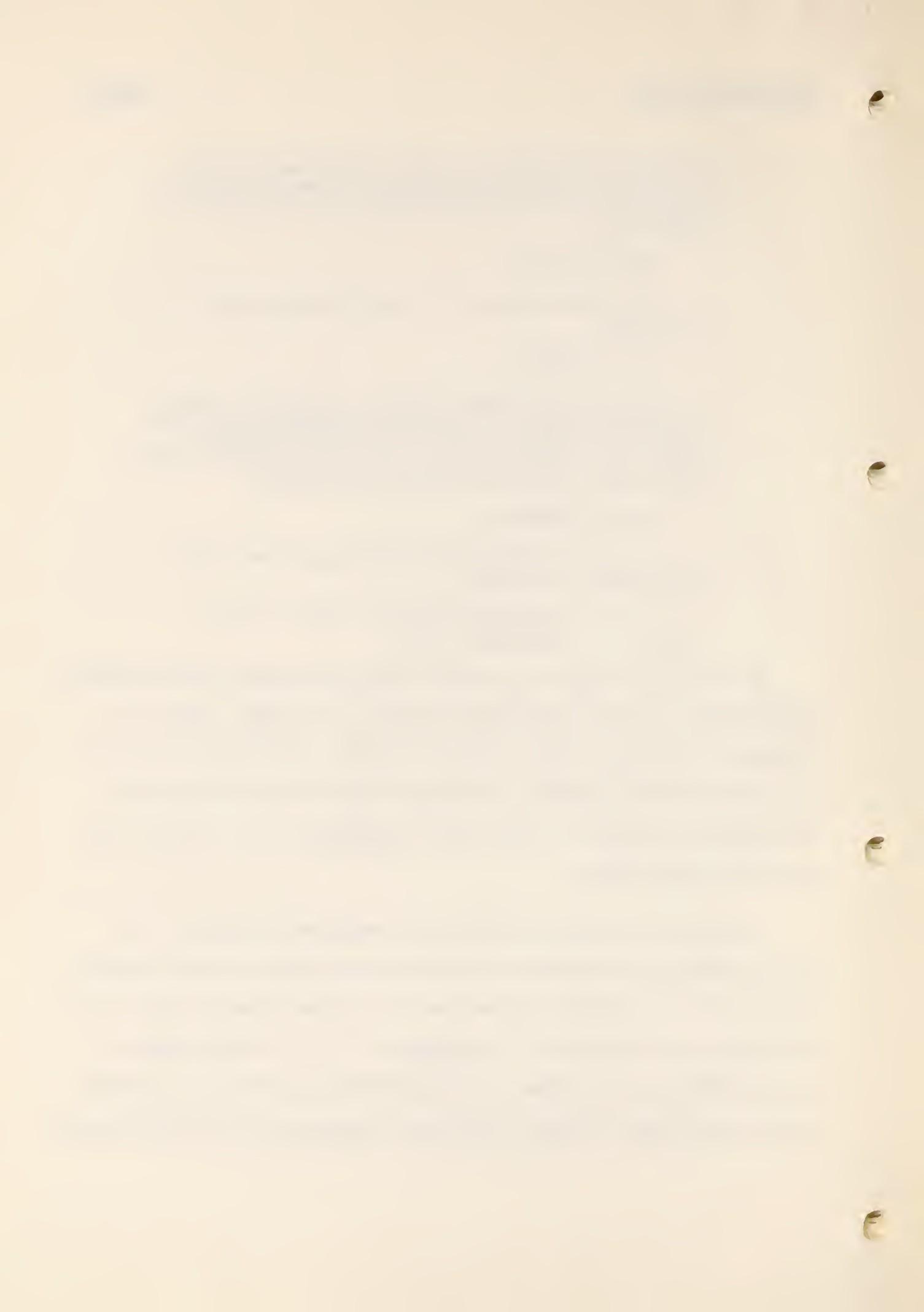
BY MR. CLIMENHAGE:

Q. Is that that important paying cash you go all the way down to the bank?

A. It's just habitual, but if I have no other choice (Evidence, p. 128)

He identified Exhibit 11 (the April 30th advertisement) as the newspaper advertisement to which he responded by enquiry that evening. There is a difference in wording between the ad of April 21, 1976 (Exhibit #3) and the ad of April 30, 1976 (Exhibit #11) and Mr. Smykalski was certain the ad he responded to referred to "three rooms" (Evidence, p. 131). This is the April 30th advertisement.

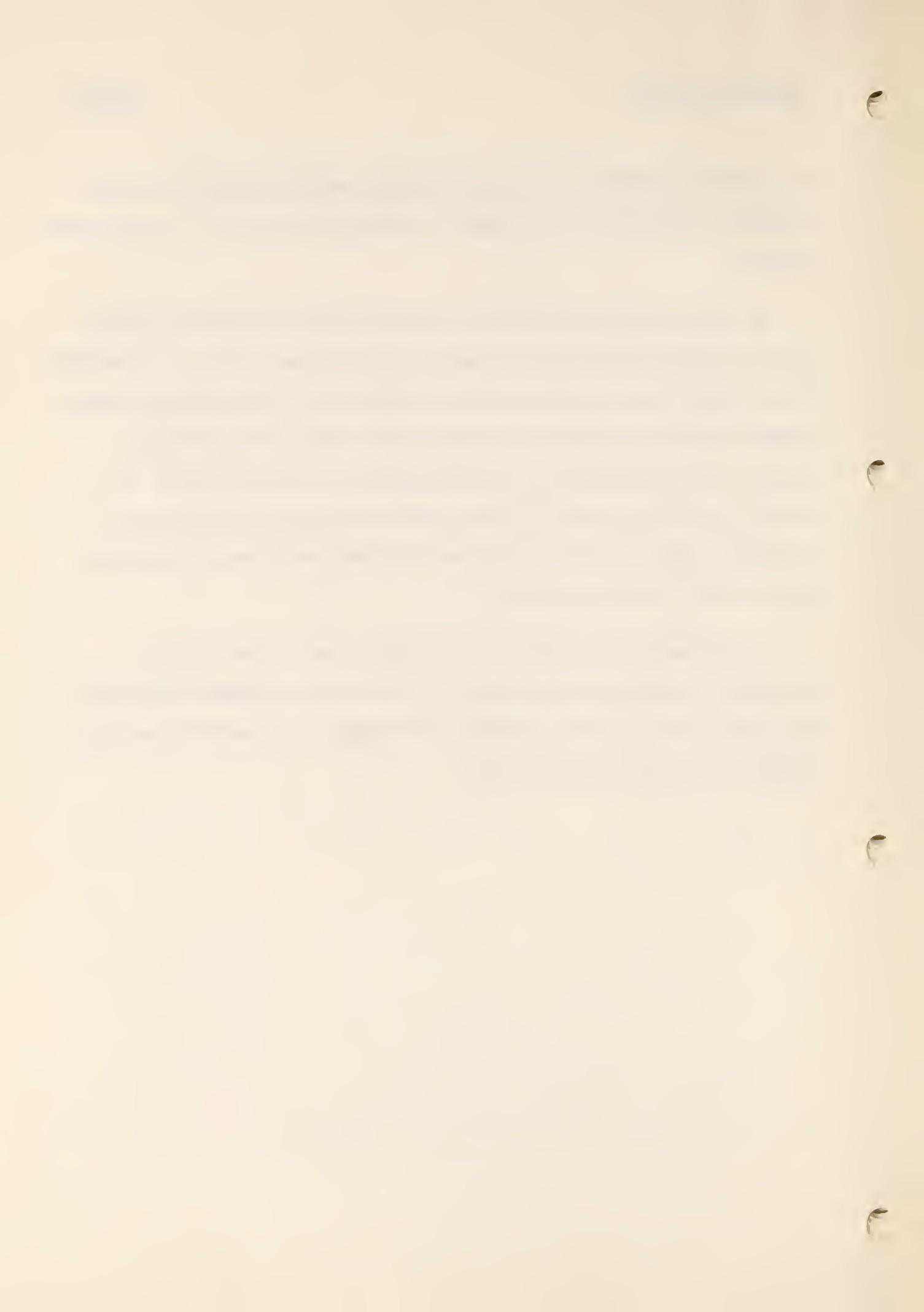
A final point should be made about Mr. Smykalski's evidence. As a final question in the examination-in-chief he was asked as to his "ancestral background". Mr. Smykalski replied that he was "part Ojibway and part - I'm not sure about the other part." (Evidence, p. 52). This might appear to be of significance, as a tenant of the apartment at one time, Mr. Smykalski, was a native person. However, there was no suggestion at all that the Crupis



ever knew Mr. Smykalski to be a native person, and Mr. Smykalski's physical characteristics would not at all suggest to someone that he was of native person ancestry.

Mr. David Zub, employed with the Community and Social Services Branch of the Provincial Government now resides in South River, Ontario. He testified that he lived in the apartment at 552 Lansdowne Court, Thunder Bay, for about a month from the end of May to the third week in June. He identified a receipt for rent (Exhibit #7) he said was given to him by Mr. Crupi. The receipt is dated May 27, 1976. He was certain he was not in Thunder Bay on April 21st, 1976, and that he first met the Crupis and viewed the apartment May 27, 1976, the day he rented it.

In concluding this summary of the evidence given at the Inquiry, I would like to compliment both counsel for the way they conducted themselves and facilitated the Inquiry through their introduction of evidence and questioning of the parties and witnesses.



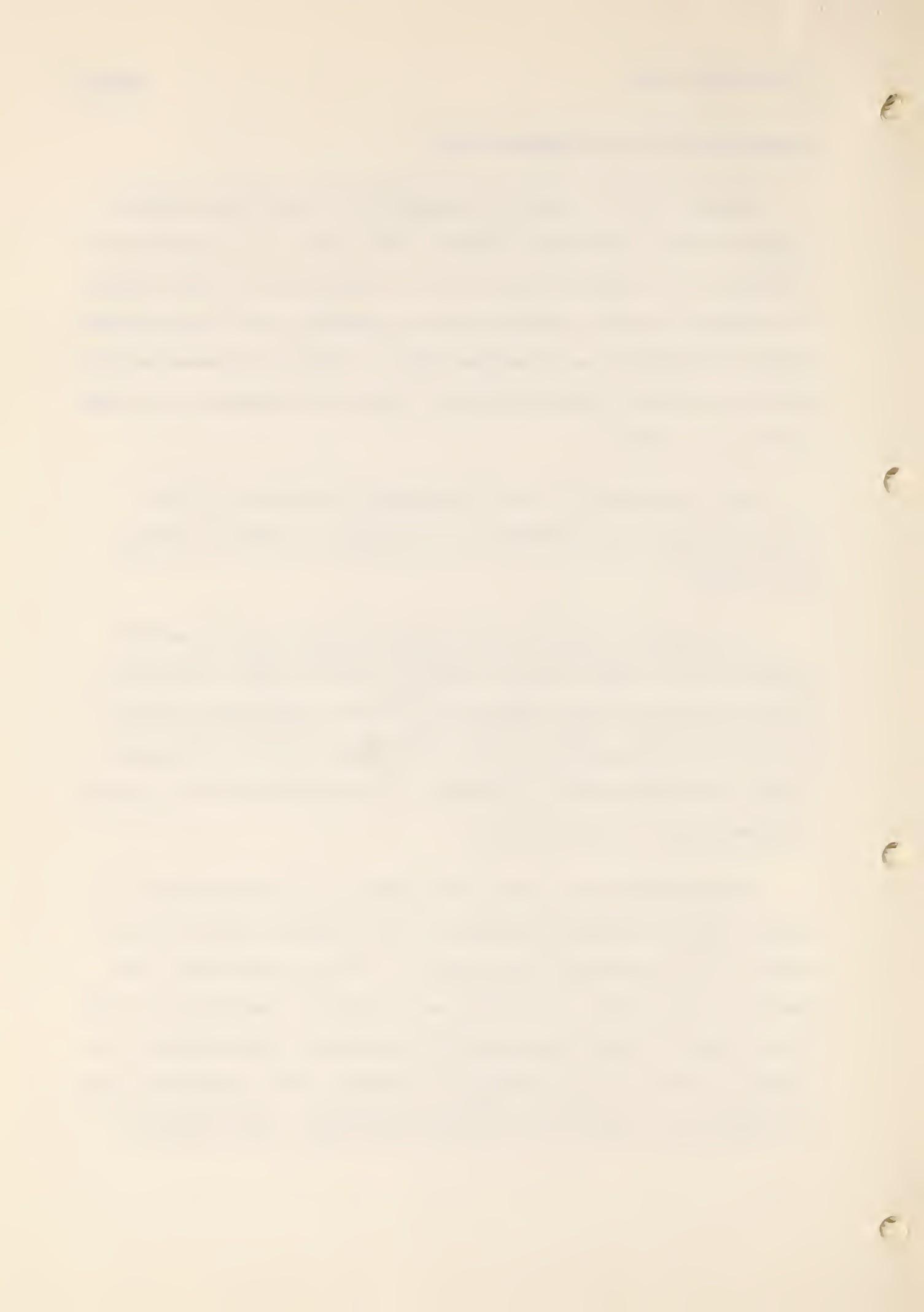
Summary of Evidence and Findings of Fact

Although there was obvious disagreement as to the factual situation I have no doubt in making the findings of fact that I do. Considering the totality of the evidence I have no doubt in finding that Mr. Crupi turned Mr. Nawagesic away from seeking to rent the apartment of Mr. Crupi, simply because Mr. Nawagesic was a Canadian Indian. I find the evidence put forward by Mr. and Mrs. Crupi attempting to suggest the contrary, to be false and I do not accept it.

The issue primarily turns on the matter of credibility. I find Leslie Nawagesic, the Complainant, to be completely truthful in giving his evidence.

Mr. Nawagesic responded to the newspaper advertisement to rent the apartment of the Crupis, and was turned away by Mr. Crupi. The conflict in the evidence turns upon whether Mr. Crupi had promised Mr. Smykalski he would hold the apartment for him, a few minutes before Mr. Nawagesic came to view the apartment or whether Mr. Crupi simply turned Mr. Nawagesic away because he is a native person.

I do not believe Mr. Crupi in his version as to what took place. I have no doubts in accepting the evidence of Mr. Smykalski that he did not come to view the apartment until April 30, 1976, and then rented it the next day, May 1, 1976. It is clear, as well, that Mr. David Zub was a tenant as of May 27, 1976, subsequent to Mr. Smykalski's brief tenancy. Mr. Smykalski and Mr. Zub were independent witnesses, with no grievance against the Crupis, and I accept their evidence unreservedly. Their version is

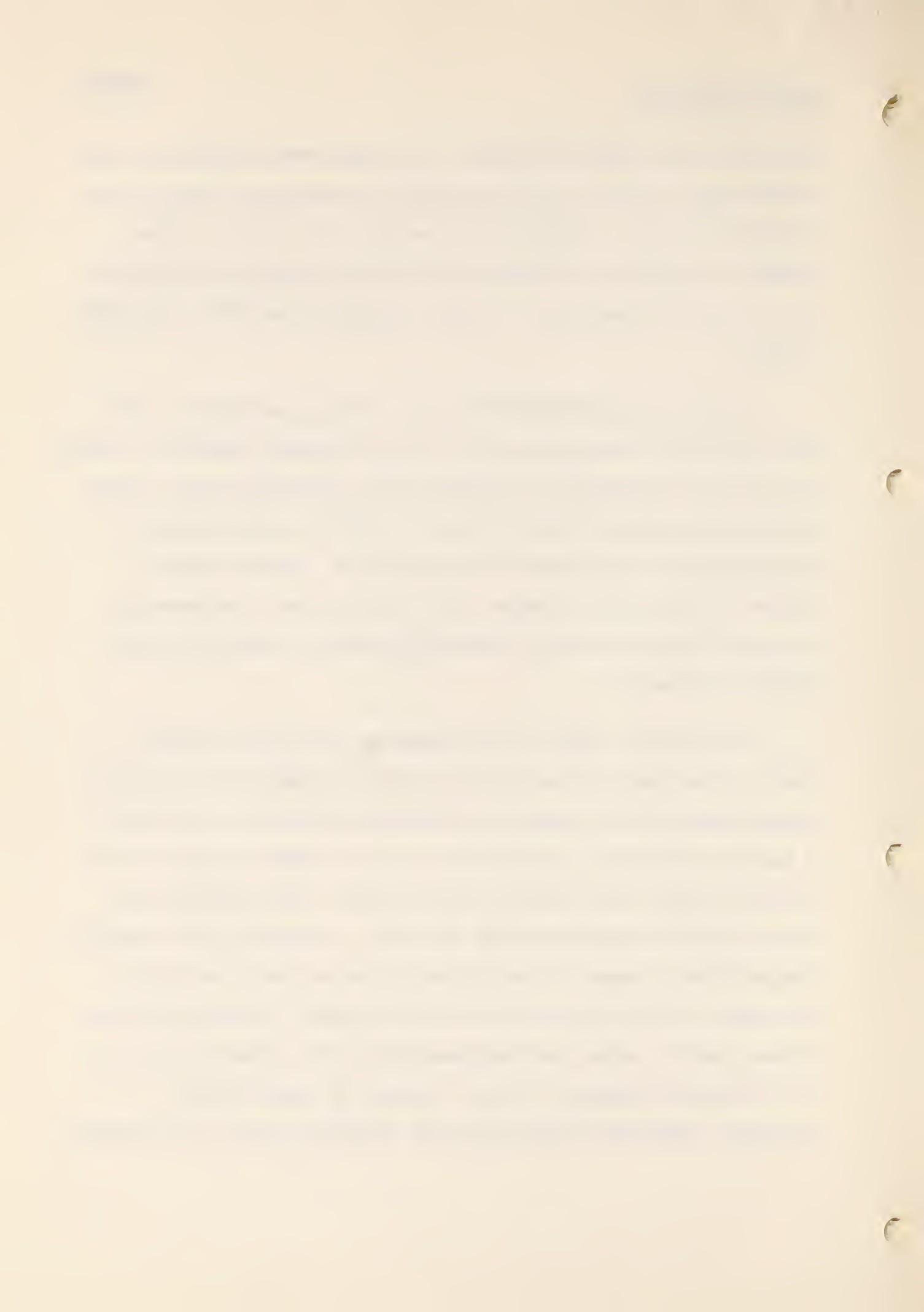


Decision and Order

borne out by the objective evidence. It is clear after considering all the evidence that there were two advertisements in the newspaper, April 21 and April 30, and that Mr. Smykalski was responding to the later ad, first viewing the apartment the evening of April 30, and returning the next day, May 1, to rent the apartment. His cheque (Exhibit #9 and #10) is dated May 1, 1976.

Mr. Zub's receipt (Exhibit #7) from Mr. Crupi is dated May 27, 1976. When confronted in cross-examination with the discrepancy between the receipt of Mr. Zub and the receipt stub (Exhibit #5) Mr. Crupi gave to Mr. McCuaig which showed a date of "April 27 to May 27, 1976", Mr. Crupi professed to not remember what had happened in writing them up. Another apparent defence on his part was to suggest that it was his lack of understanding in English that led to his not understanding what Mr. McCuaig was asking in the investigation.

I find that Mr. Crupi was not telling the truth in his testimony. I find as a fact that he falsified the receipt stub (Exhibit #5) he produced to Mr. McCuaig to try to deceive Mr. McCuaig and thwart the investigation. I have no doubts that Mr. McCuaig was at all time completely fair and meticulously patient in his dealings with the Crupis. They understood only too well what the investigation was all about. In the face of Mr. McCuaig's determination to pursue a thorough investigation and get to the truth of the matter, Mr. Crupi threw up one lie after another. At first he told Mr. McCuaig that Mr. Zub had come immediately before Mr. Nawagesic and that he was holding the apartment for Mr. Zub when he spoke with Mr. Nawagesic, suggesting corroboration to Mr. McCuaig by means of the falsified



receipt stub. He was asked repeatedly in cross-examination for an explanation of the discrepancy between the receipt stub given to Mr. McCuaig and the receipt given to Mr. Zub.

Q. I'm not asking you what happened to the one in the book. I'm asking you why the receipt in your book says April 27th to May 27th and the receipt you gave Mr. Zub says only May 27th. Did you write them at the same time?

A. No remember. (Evidence, p. 91)

Q. I see. Well Mr. Crupi I'm going to suggest to you that in fact what happened and I want you to tell me whether you are going to agree with me, I'm going to suggest to you that in fact what happened was that when you wrote up the receipt to Mr. Zub and you wrote up the receipt which showed in the book next to it that you wrote them at the same time?

A. I no remember.

Q. Because the two of them are on the same form in the book.

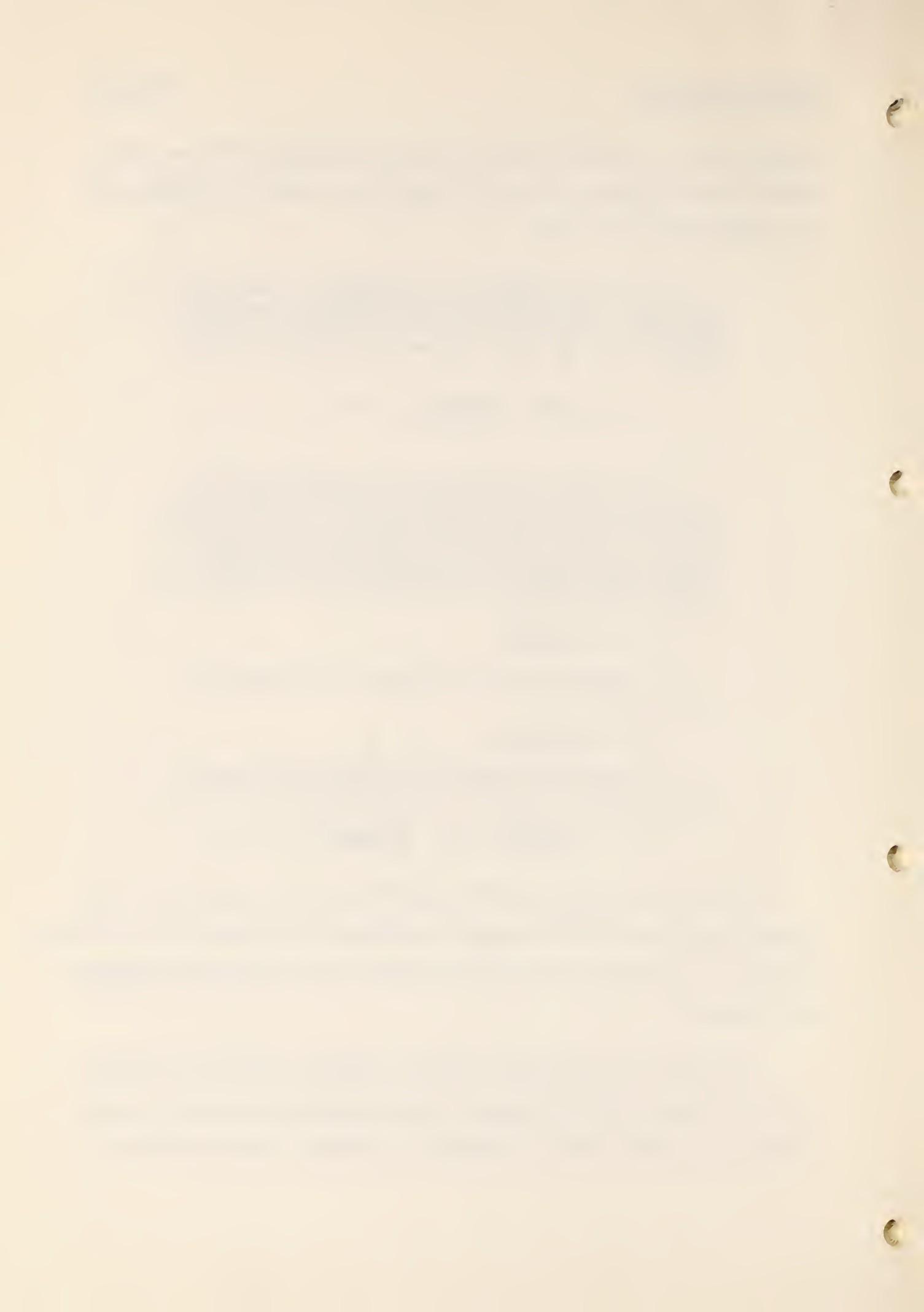
A. I no remember.

Q. And when you wrote them up they both said May 27th or excuse me, that's right, they both said May 27th?

A. I no remember that. (Evidence, pp. 91, 92)

Mr. Crupi also offered another excuse for the false receipt stub, suggesting vaguely that his little girl had destroyed the original Zub receipt stub and that he had made up a new one to the best of his recollection (Evidence, pp. 78 and 91).

I also find as a fact that it was Mr. Crupi who answered the telephone when Ms. Sabourin and Ms. Nawagesic enquired separately about the apartment later in the evening after Mr. Nawagesic's departure. On the occasion in

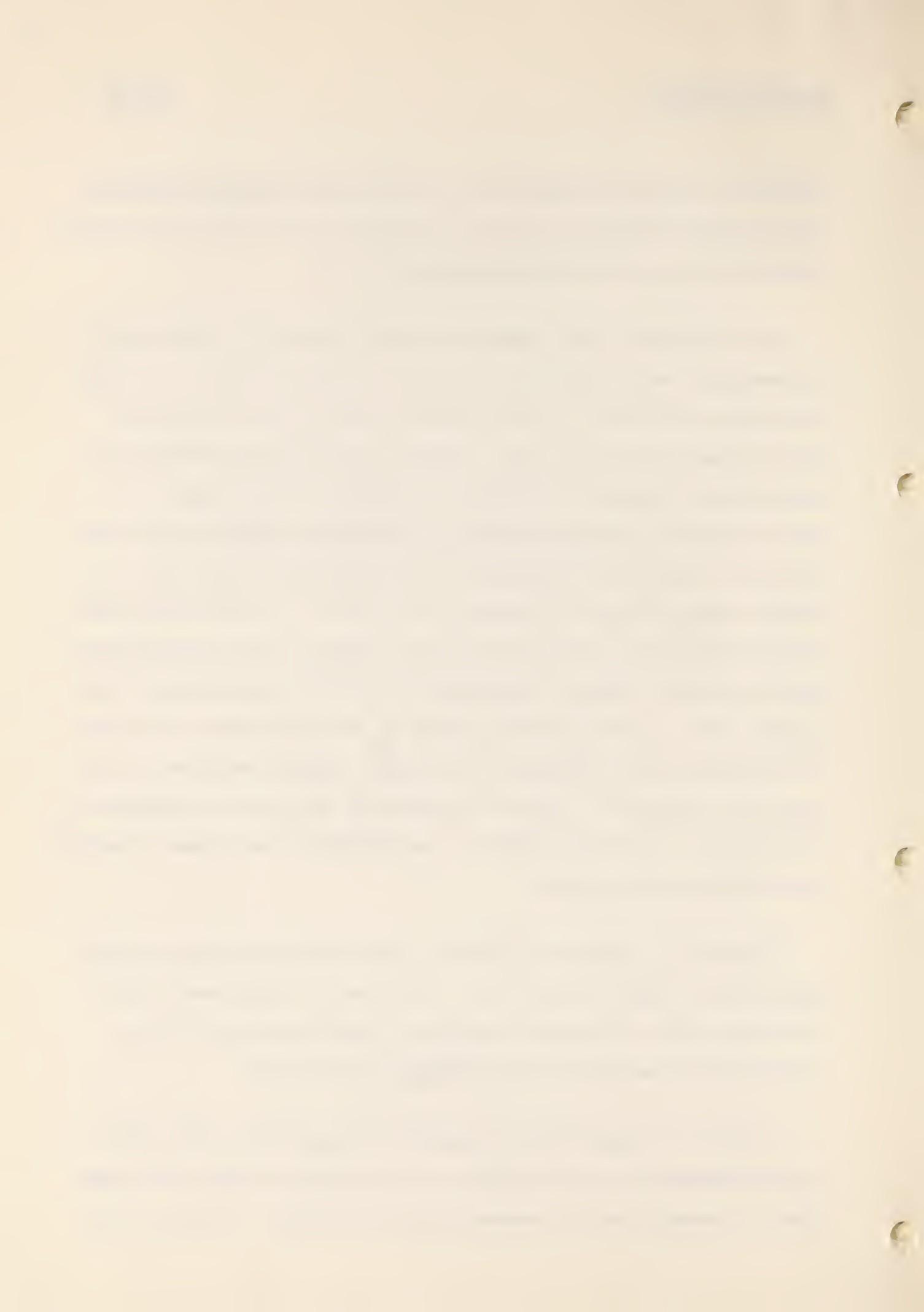


May when Mr. Zub had telephoned and a son of the Crupis apparently answered, the son enquired during the telephone conversation from a parent as to whether the apartment was still available (Evidence, p. 48.).

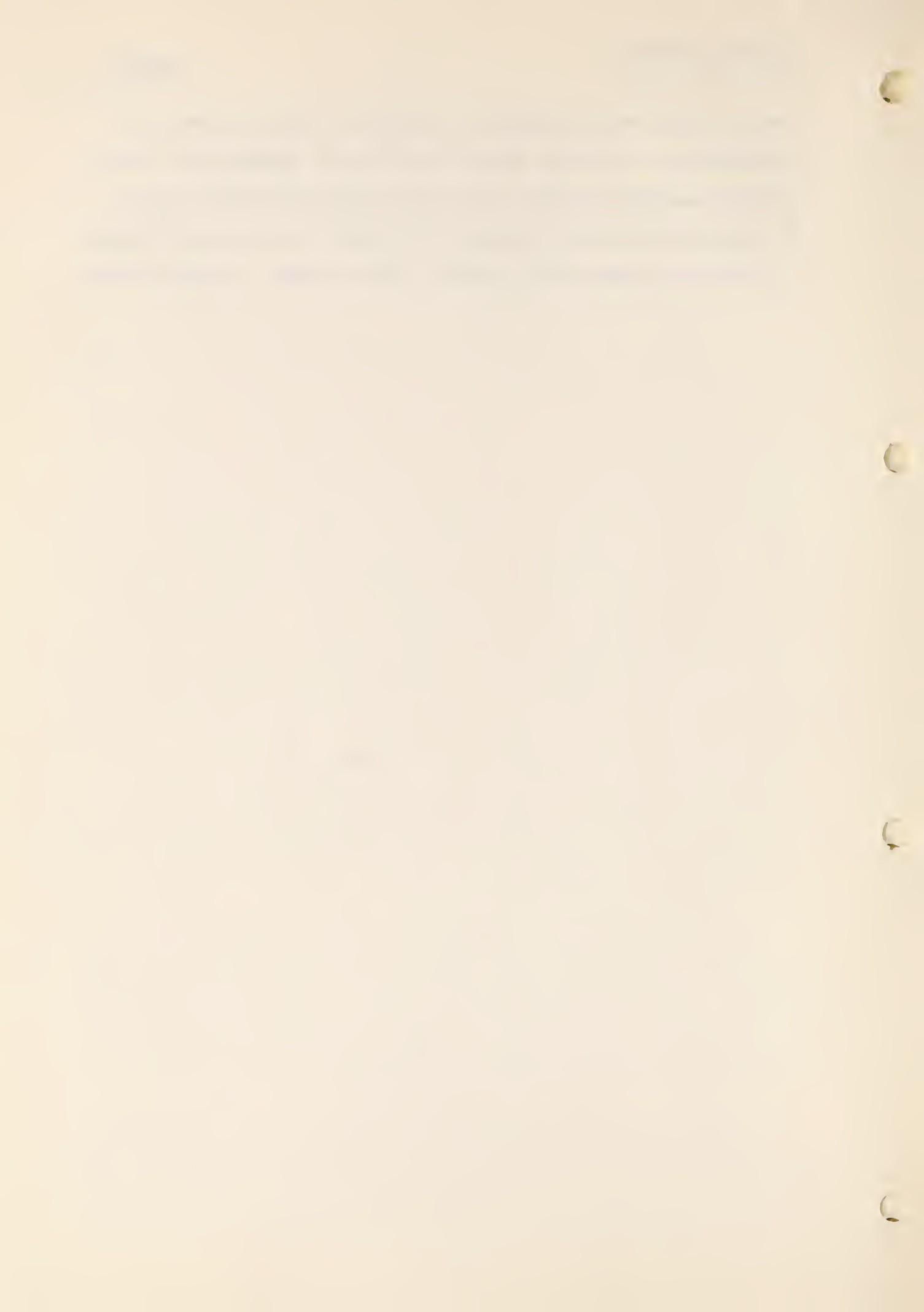
Even if the son, Frank, answered the calls placed by Ms. Sabourin and Ms. Nawagesic, (and I find he did not, and that it was the father, Mr. Crupi who answered the calls) it is impossible to accept that the son would not have been made aware by his father, mother or both that the apartment was being held for someone, and therefore not available. If Mr. Crupi was in fact holding the apartment for someone, he would have communicated that fact to his son. Moreover, I doubt that Mr. Crupi would have dealt with a prospective tenant without the knowledge of Mrs. Crupi. I do not believe their testimony suggesting reasons why she would be unaware that Mr. Smykalski supposedly came thus lending an explanation as to why she was not aware of his supposed visit, and that she then answered Mr. Nawagesic's knock at the door a few minutes later in ignorance of Mr. Crupi's supposed commitment at that point to Mr. Smykalski. I find on the facts that Mr. Crupi was untruthful in his testimony, and that Mrs. Crupi was also untruthful in an attempt to buttress the testimony of her husband.

Moreover, Mr. Smykalski was certain in his testimony that when he first spoke with Mr. Crupi (on April 30, as I find) that Mr. Crupi made it clear he would not hold the apartment but rather a deposit would have to be received by him to secure the rental (Evidence, pp. 51, 134).

I find on the facts that the apartment for rent of Mr. and Mrs. Crupi at 522 Lansdowne Court, was available to rent on April 21, 1976 at the time that Mr. Nawagesic came in response to the advertisement. I find as a fact



that Mr. Crupi was not holding the apartment for anyone at that time. The simple fact is that Mr. Crupi did not want Mr. Nawagesic as a tenant. The only reasonable inference one can make from the situation is that Mr. Crupi did not want Mr. Nawagesic as a tenant because Leslie Nawagesic is, as would be obvious to Mr. and Mrs. Crupi on sight, a Canadian Indian.



The Law

The Complaint of Mr. Leslie Nawagesic is that Mr. and Mrs. Girolano Crupi contravened section 3(1)(a) and (b) of The Ontario Human Rights Code, as amended. This provision reads:

3.--(1) No person, directly or indirectly, alone or with another, by himself or by the interposition of another, shall,

- (a) deny to any person or class of persons occupancy of any commercial unit or any housing accommodation; or
- (b) discriminate against any person or class of persons with respect to any term or condition of occupancy of any commercial unit or any housing accommodation,

because of race,... colour,... ancestry ... of such person or class of persons or of any other person or class of persons.

On my findings of fact, I have found Mrs. Crupi to be untruthful to the extent that her testimony tried to support her husband's assertion that he was holding the apartment for someone else when Mr. Nawagesic came to their premises. The giving of untruthful testimony is in itself reprehensible. However, on the facts I cannot find that Mrs. Crupi contravened The Ontario Human Rights Code. She simply sent Mr. Nawagesic to the rear of the house having told him the apartment was available, to be dealt with by Mr. Crupi.

It is clear, given my findings of fact on the evidence that Mr. Girolano Crupi has contravened this statutory provision. Mr. Crupi denied to Mr. Nawagesic any opportunity to rent the apartment at 552 Lansdowne Court, discriminating against Mr. Nawagesic because Mr. Nawagesic is a Canadian Indian. Specifically, Mr. Crupi denied Mr. Nawagesic occupancy of housing accommodation because of Mr. Nawagesic's race, colour or ancestry in contravention of section 3(1)(a) of The Ontario Human Rights Code, as amended.

This conclusion is inevitable on the facts as determined by the evidence.

I have reviewed the law with respect to section 3 of The Ontario Human Rights Code and it is useful to set forth some of the authorities and observations determined from this review.

Previous Boards of Inquiry have determined that two findings of fact are required to establish that section 3 of the Ontario Human Rights Code has been contravened:

In this inquiry the first issue that has to be determined is the factual one of whether the complainant ... was denied living accommodation by the respondents ... because of her race or colour. If I conclude that such discrimination did take place, then the second matter for determination is whether this denial comes within the terms of ... the Ontario Human Rights Code [sic].¹

As a prelude to the finding of the second necessary fact, Professor Tarnopolsky, the appointed Board of Inquiry in the above mentioned hearing, commented:

In applying anti-discrimination legislation it is always a difficult task to ascertain the real reasons motivating individuals to deny access to accommodation. Such access can be denied if it is thought that the applicant is disreputable, or unreliable, or unkempt, or very untidy, or some other undesirable characteristic which can apply equally regardless of a person's race or colour.²

In ascertaining motivation the credibility of witnesses, as well as the objective evidence proffered, is of the greatest importance. When the testimony of one witness is preferred over another, reasons for the preference are generally given. When the evidence indicates that there may have been a reasonable motive for denying accommodation, the benefit of doubt has been given to the landlord.

¹ In the Matter of Mitchell v. O'Brien, April 5, 1968, Ontario Human Rights Commission Board of Inquiry Reports. Pages 1-2.

² id., page 8.

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Mr. Horace Krever, acting as a Board of Inquiry, in considering a case heard before him, stated:

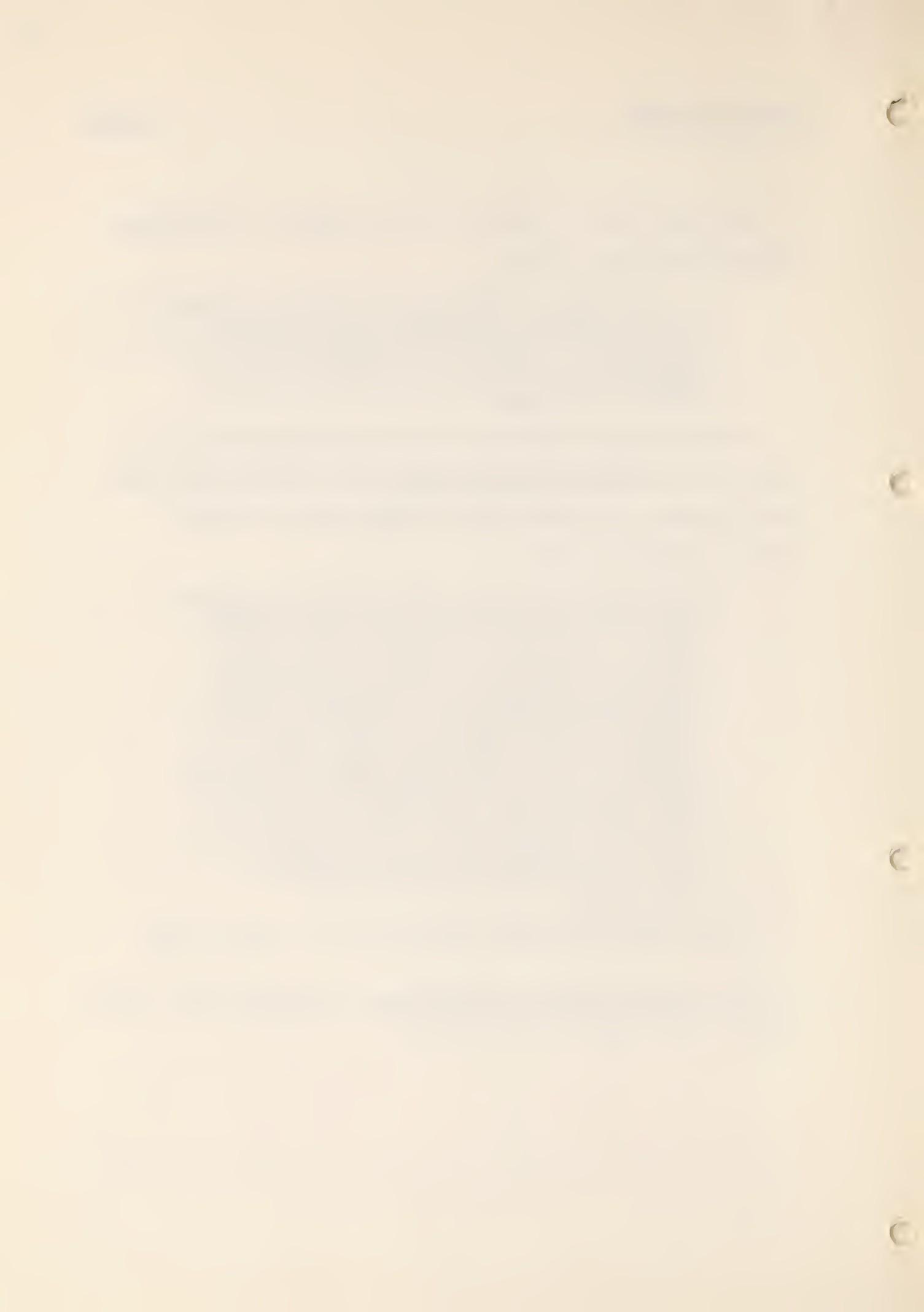
. . . Although I am suspicious of Mr. Kyryluik's denials, more than suspicion is required, and I am unable to conclude that the allegation of discrimination has been established by evidence of that degree of cogency appropriate for an allegation as serious as that made against Mr. Kyryluik.¹

Previous Boards of Inquiry have stated that hearings held by the authority of the Ontario Human Rights Code are not criminal proceedings and thus proof of an offence against the Code need not be proved "beyond a reasonable doubt":

Complaints of this nature, which turns upon conclusions as to the motives of those accused of discriminatory conduct are difficult to prove to a high degree of certainty. The instant proceeding is not a criminal prosecution, however, and it would be inappropriate to demand of a complainant or of the Ontario Human Rights Commission proceeding on his behalf, that the complaint be proved "beyond a reasonable doubt". On the other hand, the respondent has been charged with misconduct to which quite rightly attaches the condemnation of the public. More importantly, if the Human Rights Commission were to find (on the basis of this report) that such misconduct in fact occurred, either civil or quasi-criminal sanctions may be imposed. Thus, it is extremely important that findings of guilt should not lightly be made by me.²

¹ In the matter of Tompkins v. Kyryluik, July 1, 1971, at page 9.

² In the matter of Henry, Henry and Black v. Rajewski, March 4, 1969 at page 1; Harry Arthurs, Board of Inquiry.



Most commonly, the landlords deny that the alleged discrimination ever took place. In those cases the problem is to ascertain what actually happened. The two parties will then argue over the facts. Occasionally, however, a landlord has tried to justify his admitted discrimination by saying something to the effect of 'It wasn't my fault. I have nothing against the minority group, but my other tenants said they would move out if I rented to those kind of people. I wasn't really discriminating, just trying to salvage my investment'. Professor Lederman dealt with the preceding excuse in the matter of Jones v. Huber, June, 1976:

. . . In any event, race is an impermissible factor in an apartment rental decision and cannot be brushed aside because it was not the sole reason for discrimination. So long as it was one of the considerations, it will constitute a violation of the Ontario Human Rights Code.

Fear of economic loss cannot justify discriminatory conduct on the part of the Respondents. . . It matters not what the motivating reason for the racially discriminatory act is. Although motive may be an important factor with respect to the question of redress, it cannot justify the offensive behaviour. A person cannot avoid liability under the Code by arguing that he has discriminated against an individual, not because he himself objects to his race or colour, but because others do. The provisions of the Ontario Human Rights Code cannot be circumvented by proxy. If landlords were permitted to defer to the racial prejudices of their tenants, it would defeat the main objectives of the Code. Therefore, although Mr. Huber professes to bear no personal animosity or adverse feelings towards blacks and claims he was just responding to the wishes of his tenants, he had nevertheless been responsible for a contravention of the Code.¹

The American Fifth Circuit Court of Appeals in United States v. Pelzer

¹ In the matter of Jones v. Huber, June, 1976, at pages 4 and 5.

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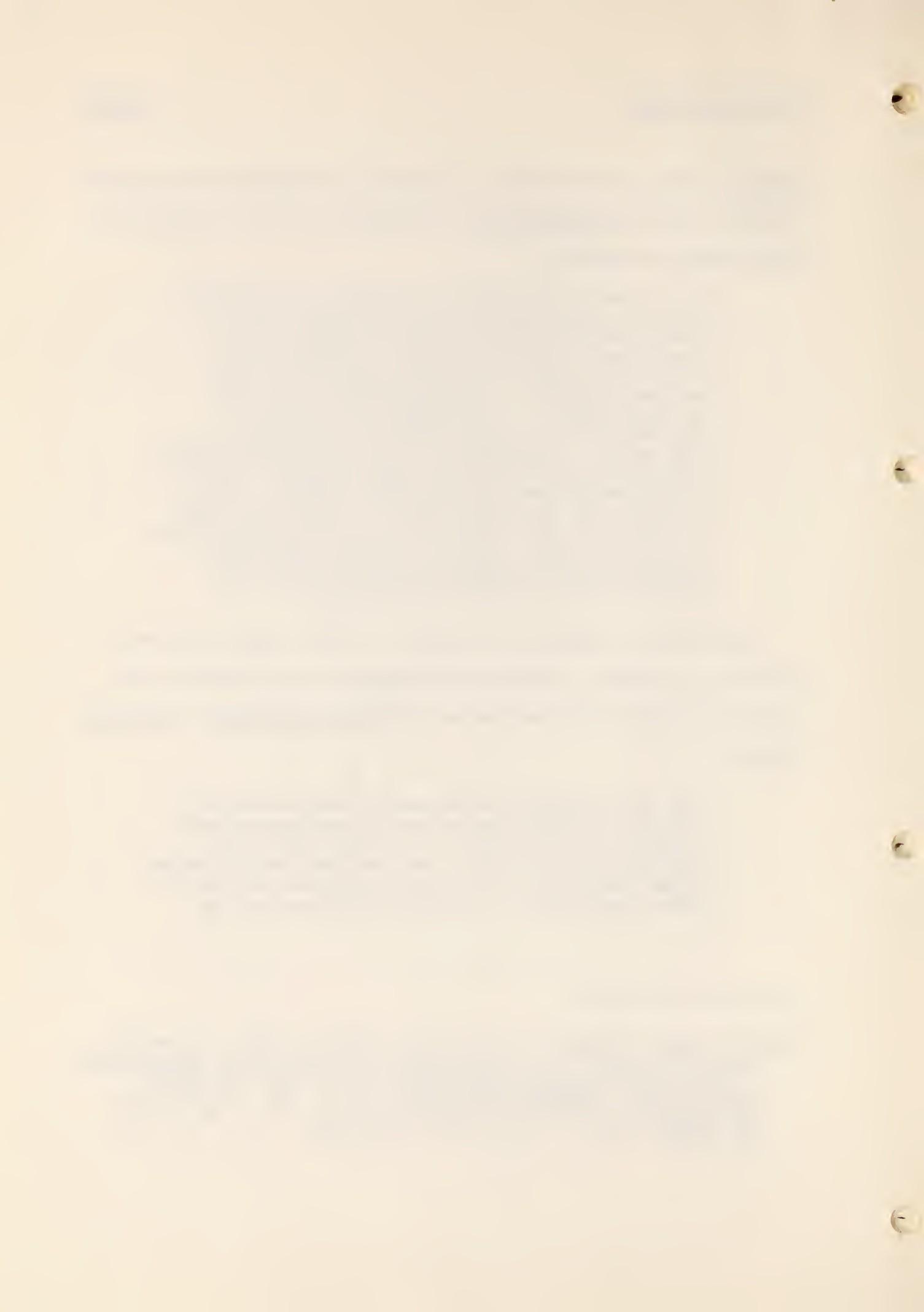
Realty Co., 484, R. 2d 438 (1973), at page 443, in dealing with an alleged violation under the Fair Housing Act, expressed an opinion in accord with that of Professor Lederman:

We find that Thames' demand that Barnett and Marshall find other buyers before they could avoid payment of closing costs was discriminatory treatment, and we find further that this discriminatory treatment was racially motivated. . . We need not and do not find that racial prejudice dominated Thames' mind during the negotiations. It is enough that race was one significant factor he considered in his dealings with the men. Defendants and their attorney continually reiterated Thames' concern with his financial investment in the unsold houses in Seth Johnson Estates. We do not doubt that his primary goal was to make money, not to violate the Fair Housing Act. But it is not necessary to show that Thames intended to deprive Barnett and Marshall of rights granted by the Act. A violation occurred because his words had the effect.¹

Occasionally a landlord has asserted, 'I have a right to do what I want with my property.' Professor Horace Krever (as he then was) very succinctly rebutted this assertion in the Tompkins and Michon v. Kyryliuk Inquiry:

They [the Kyryliuks] are sincere in their conviction that they are good, law-abiding citizens who are simply concerned with protecting their hard-earned rights. They are equally convinced that they have been victimized by the proceedings. . . In these convictions they are, of course, quite wrong. They do not yet appreciate the

¹ See also Banks v. Perk, 341 F. Supp. 1175 (1972) at 1183. For helpful cases with respect to The Fair Housing Act see generally United States v. Real Estate Development Corporation, 347 F. Supp. 776 (1972); United States v. Henshaw Brothers, Inc. 401 F. Supp. 399 (1974) at 401; United States v. L.&H. Land Incorporation, Inc., 407 F. Supp. 576 (1976).



fact that today, at least in Ontario, human rights and the dignity of every person are not subsidiary or secondary to property rights.¹

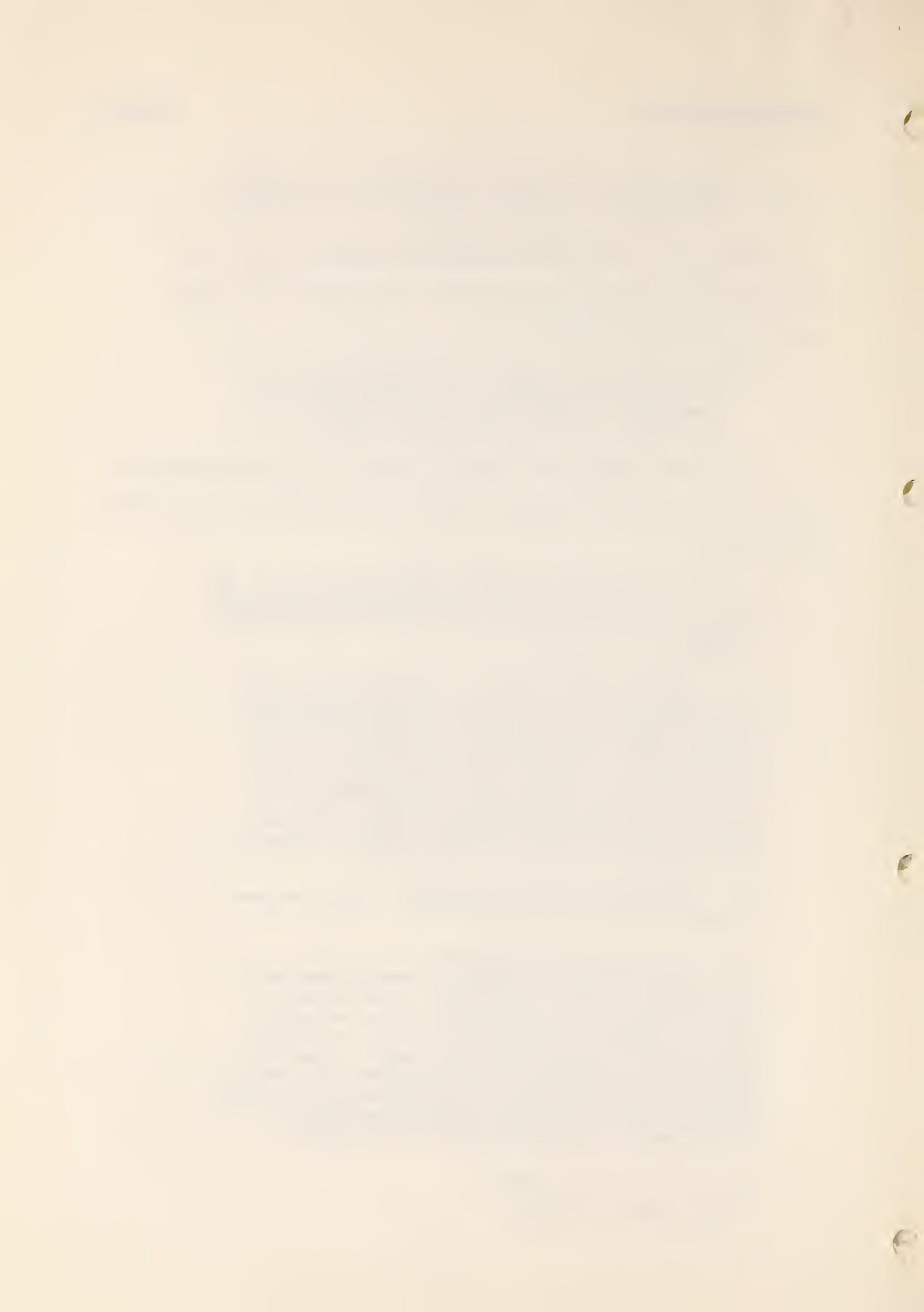
Section 14c. of The Ontario Human Rights Code provides that after hearing a complaint a board shall decide whether or not any party has contravened the Act and

- (b) may order any party who has contravened this Act to do any act or thing that, in the opinion of the board, constitutes full compliance with such provision or to make compensation therefor.

If the Board's decision is that the landlord has breached the Code by his rental practices, typical orders include any or all of the following measures:

- 1) The posting of The Ontario Human Rights Code in the lobby of the apartment building along with a declaration that the owner subscribes to the practices recommended by the Code.
- 2) A monetary award to cover extra expenses incurred by the complainant in finding alternate accommodation. The complainant is often remunerated for extra transportation costs and occasionally remunerated for the difference in rent between the accommodation which he or she eventually leased and the accommodation denied to him if the two premises were comparable (ie. the same size and type of accommodation) and if the accommodation eventually rented was more expensive than the accommodation denied to the complainant.
- 3) An order directing the landlord to offer the next suitable vacancy to the complainant.
- 4) An order directing the landlord to contact local minority group associations (usually restricted to the minority group associations representing the minority group of the complainant) when vacancies occur to advertise such vacancies before the landlord advertises the vacancies in local papers. Thus, the minority group offended should be offered the vacancies before the general public. The order may be to have the landlord inform the Ontario Human Rights Commission as to any vacancy in premises owned by the landlord.

¹ July, 1971, at page 13.



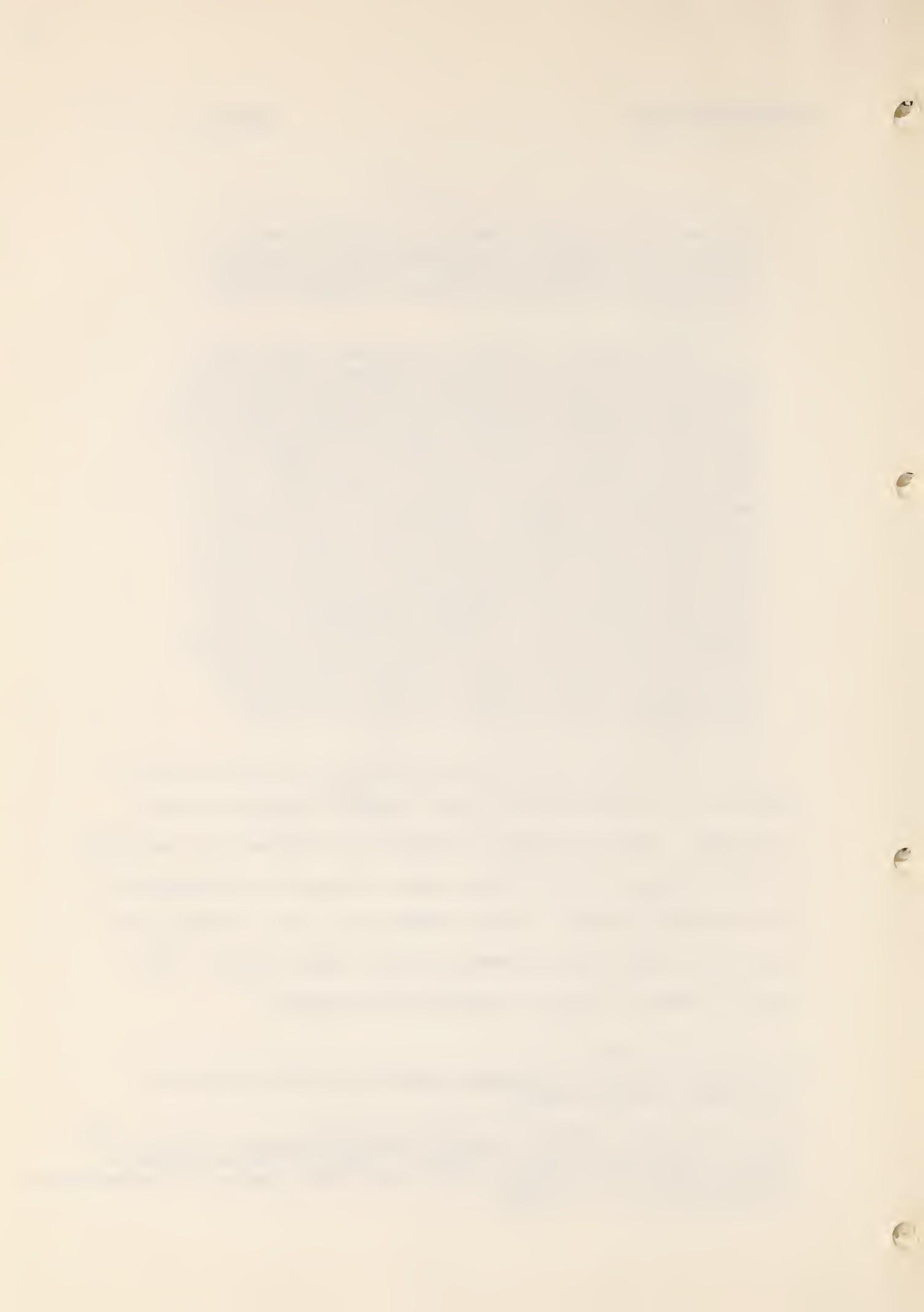
5) An award of general damages in the form of money to be paid by the landlord to the complainant to compensate for injury to feelings and dignity. An articulate view of one Board of Inquiry with respect to general damages is helpful:

"In my opinion, a Board of Inquiry has a fair amount of leeway in setting the quantum of general damages before it can be said that the Board has overstepped its functions and taken on the job of "punishing" offending conduct instead of "compensating" its victims. The Legislature has determined that a court may award a fine up to \$1,000.00 if it finds, after a trial, that a breach of any provision of the Code has occurred (see section 15(c) of the Code). This amount suggests two things. First of all, it is a guide to the level of community disapproval for offenses against the standards of behavior set out in the Code; that level is, by this token, reasonably high. One can keep that in mind when assessing the compensation for injury to dignity that should be paid to a member of the community who has suffered discrimination. Secondly, the amount of penalty exigible after a criminal trial, with its higher standards of proof than those of a Board of Inquiry, does suggest an upper limit on the quantum of general damages which can be awarded without passing from the realm of compensation."¹

As a general note to all of the abovementioned monetary awards, I might add that I find Boards of Inquiry somewhat conservative in the sums awarded. Even when damages are awarded to compensate the complainant for extra expenses incurred, Boards appear to tend not to remunerate for all the probable expenses. General damages for injury to feelings and dignity have tended to be between one and two hundred dollars. More recently, however, much higher awards have been given.²

¹ In the matter of Jahn v. Johnstone, September 16, 1977 at page 22, Mary Eberts, Board of Inquiry.

² See in the matter of Morgan v. Toronto General Hospital, October 14, 1977, Walter S. Tarnopolsky, Board of Inquiry, in which \$1700 was awarded as general damages for injury and feelings and dignity because of a contravention of section 4(1)(a) of the Code.



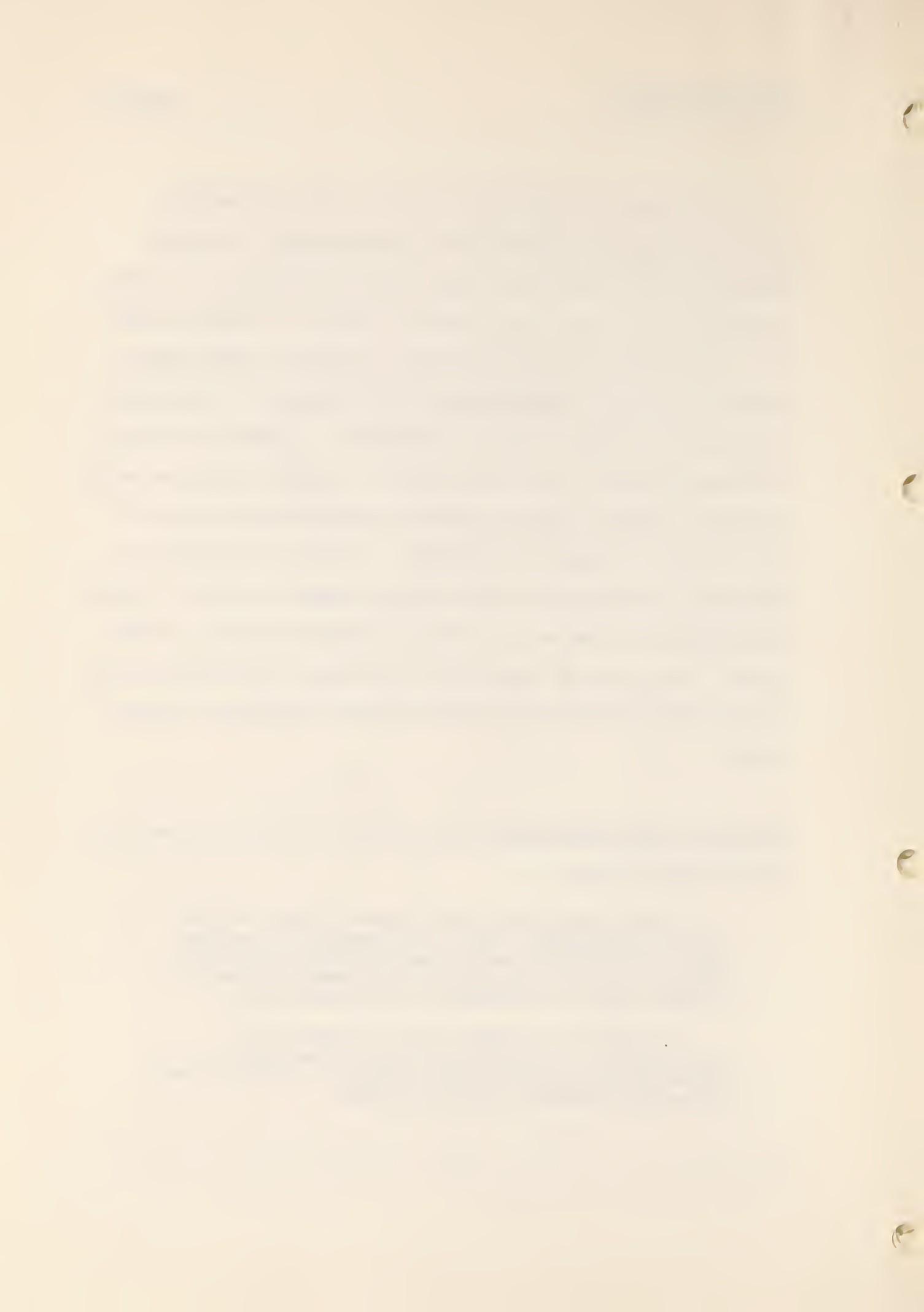
I am certain, as I have found, that Mr. Crupi discriminated against Mr. Nawagesic because he is a Canadian Indian. I can only guess at Mr. Crupi's underlying views about native persons. Mr. Crupi, an immigrant and a person whose ancestry is that of a people who have made a tremendously valuable contribution to Canada in every respect, struck me as a hard -working citizen who has done well in this country and who has made his own positive contribution. I doubt that he bears any conscious malice toward native people. I suspect he acted as he did toward Mr. Nawagesic because his view of Canadian Indians is that of an unfavorable and incorrect stereotype. I suspect his fixed mental impression is that someone who is a Canadian Indian can not be a responsible tenant, and that he, as a landlord, should not rent to a native person. In my view, Mr. Crupi fails to appreciate that in Canada human rights and the dignity of every person are not subsidiary to property rights.

The Ontario Human Rights Code includes within its Preamble and section 9 the following precepts:

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

An Whereas it is public policy in Ontario that every person is free and equal in dignity and rights without regard to race, creed, colour, sex, marital status, nationality, ancestry or place of origin.

...



s. 9 . . . The Commission shall

- (a) forward the principle that every person is free and equal in dignity and rights without regard to race, creed, colour, age, sex, marital status, nationality, ancestry or place of origin;

The belief in the fundamental equality of all persons as expressed in The Ontario Human Rights Code is fundamental to the fabric of our society.

Every statement about the nature of racial discrimination is based, more or less explicitly upon an idea of the quality of human beings, which has advanced to its present form only relatively recently. The origins of this idea of human equality may be traced to the traditional Judaeo-Christian belief in Fatherhood of God and hence in the brotherhood of men, each with equal humanity and significance.

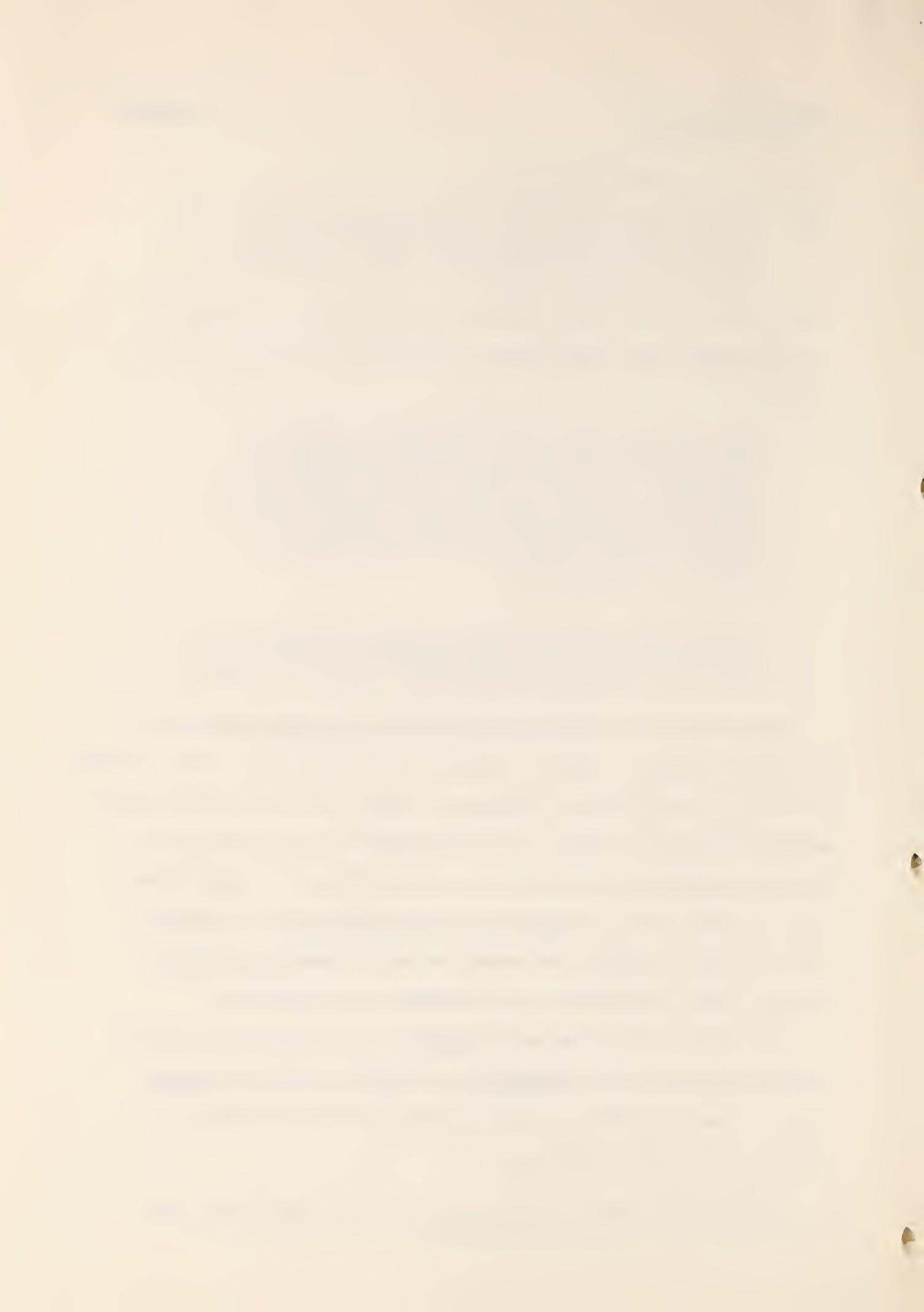
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- This perception of the fundamental equality of men as men, despite the manifold differences between individuals, lies at the heart of liberal and democratic thought in the West.¹

The public policy underlying The Ontario Human Rights Code goes to the very root values of Canada as a nation, and Canadians as a people. Thunder Bay, with its rich diversity of people who differ as to race, creed, colour, ancestry and place of origin, is a true microcosm of the Canadian mosaic. The city exemplifies the inherent worth and benefits of the values underlying the public policy of The Ontario Human Rights Code. It is critical to our society to maintain and enhance the policy underlying the Code through diligent surveillance and enforcement of its provisions.

The evidence of Mr. Nawagesic (Evidence, pp. 11, 12, 13, 16, and 17) corroborated by his sister (Evidence, p. 59) and Ms. Sabourin (Evidence, p. 56) is that he suffered a great deal because of his difficulty in

¹ A. Lester and G. Bindman, Race and Law, p. 73-4, Penguin, Eng. 1976.

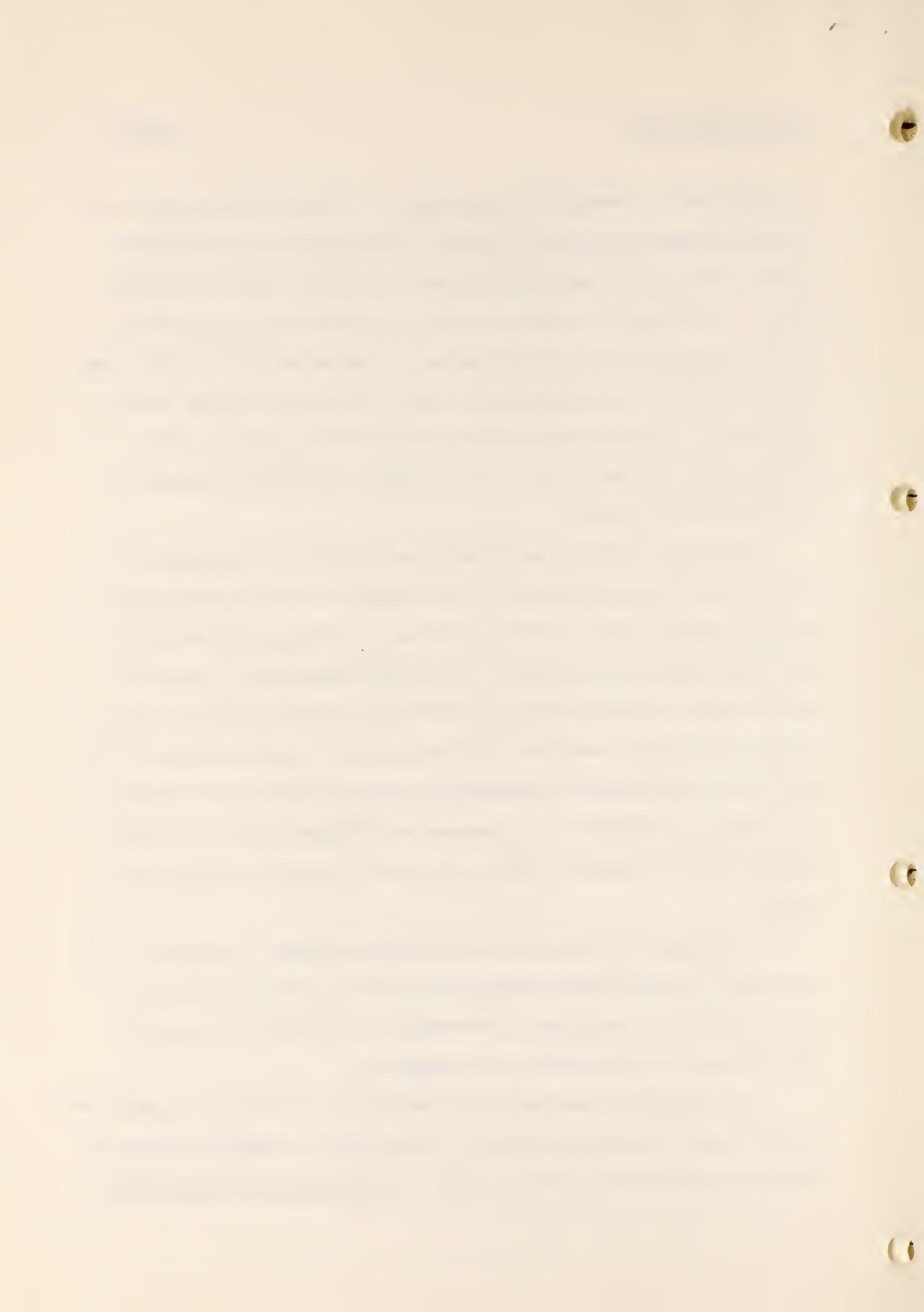


obtaining rental accommodation. Admittedly, he tried some four other places without success in the week of April 20, 1976, and it was the cumulative effect of his lack of success that caused the injury to his feelings and dignity. Undoubtedly, as was expressed by his evidence, as a Canadian Indian he had experienced discrimination to some extent all his life. The first Canadians, the original peoples, have suffered much by way of discrimination. I appreciate that the frustration and depression of Mr. Nawagesic were due only in part to the specific act of discrimination against him by Mr. Crupi.

However, Mr. Crupi's discriminatory act toward Mr. Nawagesic was a significant and substantial cause of the anguish he was experiencing the week of April 20, 1976. He quit his job and left Thunder Bay to go to Gull Bay, Ontario about April 25, 1976, frustrated and hurt. The casual observer might say that he should have had more resiliency, more perseverance, and was too sensitive. But such a view is too easily made by one who has not experienced the psychological debilitation of discrimination. Mr. Nawagesic impressed me as a responsible, diligent individual who was doing his best to succeed in life, and to make a positive contribution to society.

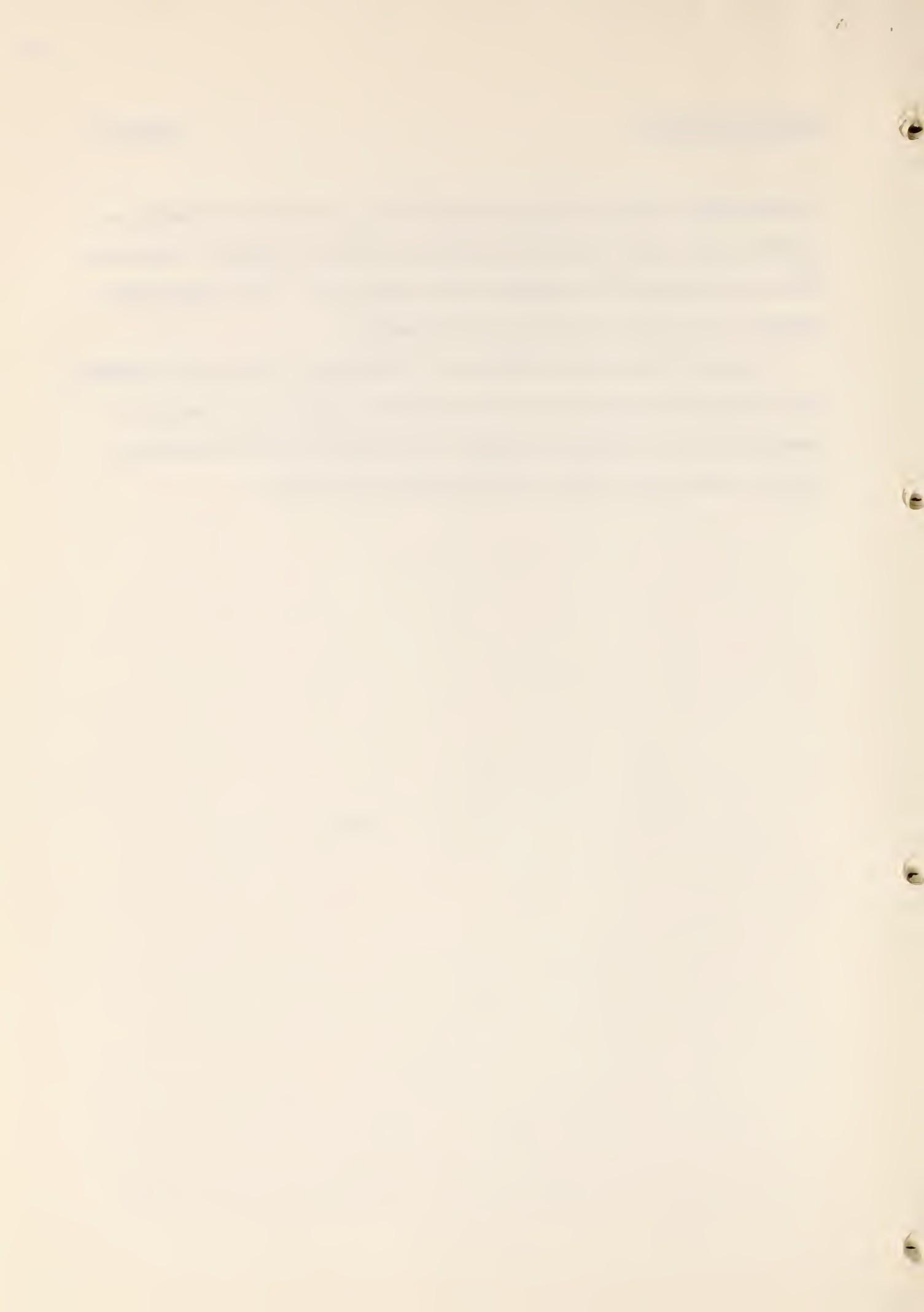
Mr. Nawagesic reflected about a month before making a Complaint. My conclusion is that he waited simply because of the depth of his anguish. He has been put to considerable inconvenience in pressing the Complaint because he lives some distance from Thunder Bay.

I have limited my consideration in determining the remedy, to simply the specific act of discrimination of Mr. Crupi toward Mr. Nawagesic through Mr. Crupi's contravention of section 3(1)(a) of The Ontario Human Rights Code.



I would adopt fully the remarks of Mary Eberts, as a Board of Inquiry, as quoted above, with respect of the question of general damages. I am satisfied that the Board has authority under section 14c. of the Ontario Human Rights Code to make an award of general damages.

Given the very serious affront to Mr. Nawagesic's dignity and feelings, and taking into account all the circumstances of this case, I award Mr. Nawagesic \$500.00 in general damages for the injury to his feelings and dignity caused by Mr. Crupi's discrimination against him.

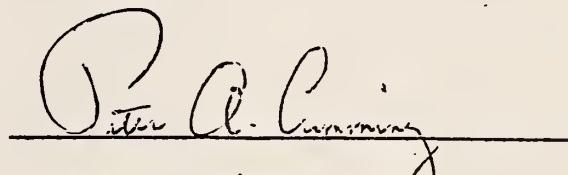


ORDER

For the foregoing reasons, this Board of Inquiry orders that Mr. Girolano Crupi, the Respondent:

- (a) send forthwith a letter of apology to the Complainant, Mr. Leslie Nawagesic, Gull Bay, Ontario;
- (b) send forthwith a letter of assurance to the Ontario Human Rights Commission that he will comply with The Ontario Human Rights Code in the future;
- (c) pay to Mr. Leslie Nawagesic the sum of \$500.00 for damage to his dignity and feelings caused by his contravention of The Ontario Human Rights Code, such payment to be made to Mr. Leslie Nawagesic before May 1, 1978.

Dated at Toronto this 6th day of February, 1978.



Peter A. Cumming
Board of Inquiry

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